(22,578)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 251.

CHARLES M. CAMPBELL, APPELLANT,

vs.

NORTHWEST ECKINGTON IMPROVEMENT COMPANY, T. CUSHING DANIEL, AND SAMUEL C. REDMAN.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

No. 2176.

CHARLES M. CAMPBELL, Appellant,
vs.
NORTHWEST ECKINGTON IMPROVEMENT COMPANY et al.

1 In the Court of Appeals of the District of Columbia.

No. 1660.

NORTHWEST ECKINGTON IMPROVEMENT COMPANY et al., Appellants,
vs.
CHARLES M. CAMPBELL.

Supreme Court of the District of Columbia.

No. 24463. Equity.

NORTHWEST ECKINGTON IMPROVEMENT COMPANY, a Corporation; SAMUEL C. REDMAN, T. CUSHING DANIEL
vs.
CHARLES M. CAMPBELL.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the city of Washington in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above entitled cause, to wit:

Bill.

Filed February 8, 1904.

In the Supreme Court of the District of Columbia.

No. 24463, Equity Docket 54.

NORTHWEST ECKINGTON IMPROVEMENT COMPANY, a Corporation; SAMUEL C. REDMAN, T. CUSHING DANIEL
vs.
CHARLES M. CAMPBELL.

The Bill of Complaint of the Northwest Eckington Improvement Company, Samuel C. Redman and T. Cushing Daniel respectfully shows to the Court as follows:

1. The Complainant, Northwest Eckington Improvement Company, is a corporation duly incorporated under the laws of the State of Virginia, conducting business in the District of Columbia, and brings this suit in its own right as hereinafter set forth. The complainants, Samuel C. Redman and T. Cushing Daniel are
2 both citizens of the United States, and residents of the District of Columbia, and bring this suit in their own right as hereinafter set forth.

2. The defendant, Charles M. Campbell, is a citizen of the United States, and a resident of the District of Columbia, and is sued in his own right as hereinafter set forth.

3. The complainants allege that the Northwest Eckington Improvement Company, being a company incorporated for the purpose, among other things, of buying, developing and selling real estate, is the owner of a piece or parcel of land, lying and being in the County of Washington, District of Columbia, and known and described as and being all of Lot Thirty-five (35) in the Subdivision of a tract of land called "Metropolis View," made by John A. Middleton and Thomas W. Berry, Trustees in Equity Cause No. 500, Docket 7, of this Court, a plat of which subdivision is recorded in the office of the surveyor for the District of Columbia, in Liber "Governor Shepherd" at folio 41, the title of which it acquired from the complainant T. Cushing Daniel by two deeds duly recorded among the Land Records of said District of Columbia; the first being dated July 28, 1891, and recorded on July 31, 1891, in Liber 1602 at folio 253 *et seq.*, and the second of said deeds being dated December 21, 1900, and recorded December 27, 1900, in Liber 2539 at folio 293 *et seq.*, to which deeds reference is hereby made, and the complainants pray that they may be read and taken as a part of this Bill of Complaint at the hearing thereon.

That from time to time by various conveyances recorded in the aforesaid Land Records, the complainant Northwest Eckington Improvement Company has conveyed portions of said Lot Thirty-five (35) to various and sundry persons, but at the time of the making of the contract of October 23, 1902, between the parties to this suit hereinafter more fully set forth, the greater part of said lot Thirty-five (35) still belonged to said Improvement Company and still belongs to it, and the same was and is largely unimproved land, (although for many years having water, sewer and sidewalk facilities) except for the improvements recently made thereon as hereinafter set forth. The complainants further allege that the said Samuel C. Redman and T. Cushing Daniel are the owners and holders of a large majority of the stock in said Northwest Eckington Improvement Company.

4. The complainants further allege that being desirous of improving and developing the said property belonging to the Northwest Eckington Improvement Company, of which said Daniels and Redman were the principal stockholders, they, in the early part of the year 1902, negotiated with the defendant Campbell with the view of obtaining his services and aid in carrying out their aforesaid plan of developing and improving said property; that said Camp-

bell proposed to the complainants the organization of a Sanitary Dwellings Company, which was to take over from the complainant Improvement Company its said property, for the purpose of improving same, and said Campbell undertook the organization of said Sanitary Dwellings Company and the sale of its stock; that
3 thereupon the parties hereto entered into a written contract under date of March 13, 1902, which, among other things, provided for the incorporation and the organization of said Sanitary Dwellings Company by said Campbell and the sale of its stock by him for the purpose aforesaid. A copy of said contract these complainants have not got, or if they or either of them ever had it, the same has been mislaid; but the defendant has the original thereof, and they hereby call upon him to produce same at the hearing on this bill, or before. Said Campbell organized said Sanitary Dwellings Company and endeavored to sell stock therein for the purpose of raising money to carry out the aforesaid contract but failed, and the project was thereupon abandoned by him. That in and about the organization of said Sanitary Dwellings Company and the attempted sale of its stock, the defendant Campbell claims to have expended Eleven Hundred and Sixty-nine and 97/100 (1169.97) Dollars, which became, in part, the subject matter of a later contract between the parties to this suit, hereinafter set forth.

5. The complainants further allege that after the failure of the defendant Campbell, as set forth in the preceding paragraph of this bill, the complainants, still desiring to improve and develop the aforesaid property belonging to the complainant Improvement Company, renewed negotiations with said Campbell for said purpose, and finally on, to wit, October 23, 1902, the parties to this proceeding entered into another written contract, a copy of which, marked Exhibit No. 1 is hereto annexed, and is to be taken and read as a part of this bill.

That as will be seen by reference to said contract, the defendant Campbell was to furnish his skill as a builder, and his assistance financially, to the complainants for the purpose of improving, developing and marketing the aforesaid property of the complainant Improvement Company, the intention of the parties being to erect houses upon said property, and the said contract provided for the erection at once of five houses on the said property to be followed "with others as soon as such a course is warranted by the results and approved by the judgment of the parties of this (said) agreement."

The contract further provided that in consideration of the rendition of said services and financial aid by said Campbell, he was, when said contract was completed, "to become possessed of an undivided third interest in the property."

That in pursuance of the aforesaid agreement, the complainants caused to be conveyed to the complainants Daniel and Redman and the defendant Campbell, as tenants in common, a portion of the property belonging to the Northwest Eckington Improvement Company sufficient in quantity upon which to construct five two family apartment houses of two suites each. The deed conveying same is dated October 30, 1902, and was recorded among the afore-

said Land Records on December 6, 1902, in Liber No. 2684 at folio 352 *et seq.*, and reference to said deed is hereby made and leave is prayed to read said deed at the hearing of this bill.

That the said parties to whom said property was conveyed immediately borrowed from the Union Savings Bank, of Washington, the sum of Twelve Thousand, Five Hundred (12,500) Dollars, to secure which they executed a deed of trust upon the property so conveyed to them, which deed of trust is also duly recorded among the aforesaid Land Records, and is outstanding and unpaid. The money so borrowed was to be used in part in extinguishing a prior deed of trust upon the property so conveyed, and in part to aid in the building and construction of the five houses, as aforesaid.

The complainants further allege that the building of the five houses had hardly commenced when the defendant Campbell began to insist that his rights under the aforesaid contract of October 23, 1902, should be secured to him upon an undivided third interetst in the property owned as aforesaid by the complainant Improvement Company, and the complainants, finally yielding to the representations and solicitations of said defendant, and for his security only, agreed that the complainant Improvement Company should make the conveyance requested by said Campbell, and thereupon the complainant Improvement Company conveyed to the defendant Campbell an undivided third interest in its aforesaid property; the deed therefor being dated January 16, 1903, and recorded among the aforesaid Land Records on January 19, 1903, in Liber 2707 folio 130 *et seq.*, to which deed a reference is hereby made, and complainants pray the same may be read at the hearing on this bill.

The complainants further allege that in furtherance of the aforesaid contract of October 23, 1902, the complainants caused to be conveyed to said Daniel Redman and Campbell a sufficient quantity more of land belonging to the complainant Improvement Company, upon which to erect five other apartment houses similar in object and general design to the five mentioned above; the deed conveying said land being dated March 31, 1903, and recorded among the aforesaid Land Records on May 1, 1903, in Liber No. 2708 folio 342, and the parties to whom said land was so conveyed immediately borrowed from the Colonial Fire Insurance Company, of the City of Washington, a further sum of Twelve Thousand, Five Hundred (12,500) Dollars, secured by a deed of trust upon the land so conveyed to them, which money was used in part in extinguishing a prior deed of trust upon said land, and in part for the construction and building on said land of said five houses.

6. The complainants further allege that at the time, they having full confidence in the skill as a builder, financial resources and business sagacity of said Campbell, and believing that he would faithfully execute and carry out the duties imposed upon — by the contract aforesaid, from time to time became liable with said Campbell on promissory notes represented to them by him as necessary to be used in said building enterprise and said Daniel advanced to said Campbell some money. Said Campbell represented

to the complainants that said ten houses would cost, (not including the amount required to discharge a prior encumbrance upon the land on which they were built), about Thirty-three Thousand (33,000) Dollars. Said houses were finally completed, and are now occupied by tenants.

5 7. The complainants further allege that on November 23, 1903, the complainant Improvement Company, with the acquiescence and consent of the defendant Campbell, entered into a contract for the sale of a portion of its land to one Antonio Malnati for the sum of Fifteen Thousand, Two Hundred (15,200) Dollars; that out of this sum it became necessary to pay about Six Thousand (6000) Dollars to the holder of the mortgage or deed of trust and interest upon the said property of the Improvement Company and some taxes due thereon, leaving nearly Nine Thousand (9,000) Dollars surplus proceeds of sale.

About the time the said sale to said Malnati was to be closed, the defendant Campbell demanded that there should be paid to him out of the surplus proceeds of sale, first, one-third thereof, he claiming to be the owner of one-third of the property of said complainant Improvement Company, and that there should next be paid to him out of said surplus proceeds the sum of Four Thousand (4,000) Dollars, which he claimed he had advanced to the aforesaid building enterprise out of his own pocket, and he refused to join in the conveyance to said Malnati, unless his said demands were complied with.

The defendant Campbell then presenting to the complainants what he called a statement, without vouchers, and showing the balance demanded, but many of its items being doubled and there being otherwise erroneous charges, and large amounts being for moneys paid out by him on his personal account, the complainants refused compliance with his demands as made, but in order not to lose the sale to said Malnati, which they were about to do, owing to the delay occasioned by said Campbell's demands, it was agreed that the sum of Four Thousand (4000) Dollars, should be held by Judson T. Cull, a disinterested party, pending the ascertainment of the true state of accounts between the parties to this proceeding, and that the remainder of said proceeds of sale should be divided, one-third to said Campbell, and two-thirds to the complainants.

The complainants refused to admit that said Campbell was entitled to any of the proceeds of said sale, and reserved to themselves the right to contest his claims thereto, as will be seen by a letter addressed to said Judson T. Cull, signed by the complainant Daniel on behalf of himself and his co-complainants, a copy of which letter and the acceptance thereof by said Campbell, marked Complainants' Exhibit No. 2 is hereto annexed and is prayed to be taken and read as a part of this Bill of Complaint.

That thereafter the defendant Campbell produced and delivered to the complainants some vouchers in support of his aforesaid claims, from which statement above referred to and vouchers and from such other information as the complainants could obtained with respect thereto, they caused an accounting to be made by a competent

accountant, with the result that instead of said buildings costing what said Campbell had represented to the complainants, they would cost, according to bids he had received, to wit, about Thirty-three Thousand (33,000) Dollars, there has been charged against these complainants on account thereof over Forty-four Thousand (44,000) Dollars, the difference not having been accounted for by Campbell; that instead of said Campbell having advanced from his private funds for said building enterprise the sum of Four Thousand (4,000) Dollars, as claimed by him, he is indebted to said operation and the complainants in a sum in excess of Five Thousand (5000) Dollars, and that since the complainants have communicated to said defendant the results of said accounting, he has admitted that his claim of Four Thousand (4000) Dollars should be reduced by over Two Thousand, Three Hundred (2300) Dollars, but said Campbell has declined to give the complainants any information as to the cost of the said buildings since the controversy between them has arisen; and he has refused to give to counsel for the complainants a copy of the aforesaid contract of March 13, 1902, and claims to be the absolute owner of an undivided third interest in the property of the complainant Improvement Company under the deed to him aforesaid, which deed these complainants repeat was intended, designed and so understood by the parties to this proceeding to be merely a security to said Campbell in case he should faithfully perform, execute and carry out the duties and conditions of the contract.

6

The complainants further allege that the said Campbell threatens that he will not consent to the sale of any of the aforesaid property of the complainant Improvement Company, and fails to consent in writing to the application of any part of the said Four Thousand (4000) Dollars to the payment of various promissory notes executed by the complainants Daniel and Redman and the defendant Campbell for use in and about said Building enterprise, or for the payment of any open accounts arising from and due in connection with said building enterprise, and the holders of said notes that have matured and the owners of said accounts overdue are threatening suit against the complainants and the defendant, and they have, in fact, brought suit in a court of one of the Justices of the Peace for the District of Columbia on one of said notes past due.

8. Complainants further allege that defendant Campbell has failed to carry out and perform the obligations imposed upon him by the aforesaid contract of October 23, 1902, and he has involved the complainants in debt and has refused to inform them as to the cost of said buildings or in any complete and satisfactory manner to account for the large sums of money that have been placed at his disposition for the building operations aforesaid, and threatens to embarrass complainants in making any disposition whatsoever of any of the said property belonging to them, and the rights of these complainants are therefore endangered and put in jeopardy and they are subject to necessarily harassing suits and actions by the aforesaid creditors, and they have no means of protecting themselves save by the aid of a Court of Equity.

The premises considered, the complainants pray:

1. That the United States writ of subpœna may issue directed to the defendant Campbell, requiring him to appear and answer the exigencies of this bill.

7 2. That he be restrained and enjoined from making any conveyance of the undivided third interest in the property of the complainant improvement company conveyed to him as set forth in this bill.

3. That he be required to render a full and complete statement of the cost of the aforesaid buildings, the amount of money received and disbursed by him in and for the construction of said buildings, and that this cost might be referred to the Auditor before whom said accounts should be rendered.

4. That all contracts existing between the parties to this litigation referred to and set out in this bill, be canceled.

5. That the said defendant Campbell be required to reconvey to the complainant Improvement Company the undivided third interest in its said property heretofore conveyed to said Campbell by said Improvement Company.

6. And for such other and further relief as the justice and nature of the case may require.

NORTHWEST ECKINGTON IMPROVEMENT CO.,
By T. CUSHING DANIEL, *Its Secretary.*
T. CUSHING DANIEL. [SEAL.]

The defendant to this Bill is Charles M. Campbell.

RALSTON & SIDDONS,
Plaintiffs' Solicitors.

DISTRICT OF COLUMBIA, *ss:*

T. Cushing Daniel, being first duly sworn, on oath deposes and says that he has read the foregoing Bill of Complaint by him subscribed and knows the contents thereof; that the facts therein stated upon personal knowledge are true, and those stated upon information and belief he believes to be true.

T. CUSHING DANIEL.

Subscribed and sworn to before me, this 4th day of February, A. D. 1904.

HARVEY T. WINFIELD,
Notary Public. [SEAL.]

Memorandum.

For Complainant's Exhibit No. 1, see Complainant's Exhibit No. 1, which is incorporated in testimony of Complainant, page — of this record.

8 EXHIBIT No. 2.

JANUARY 7, 1904.

J. T. Cull, Esq., Washington, D. C.

DEAR SIR: In order that the sale negotiated by Mr. Antonio Malnati shall not fail by reason of the claims advanced by Mr. C. M. Campbell, I desire to advise you on behalf of the Improvement Co., Mr. S. C. Redman and myself, for whom I am authorized to speak, that while reserving the right of contesting hereafter with Mr. Campbell the claims that he now advances with respect to the disposition of the money to be received from Mr. Malnati, and in no wise conceding any of said claims, you are authorized out of the purchase money received from Mr. Malnati to pay the taxes upon the property, $6000.00 to the holders of the present first deed of trust, retaining $4000.00 in your hands to await the settlement of the controversies which have arisen between Mr. Campbell and those for whom I speak, and the balance, less the deposit already received by the Improvement Co. shall be divided into three parts, one-third thereof you are authorized to pay over to Mr. Campbell, and the remaining two-thirds to the Northwest Eckington Improvement Co.

(Signed) T. C. DANIEL.

Accepted.

Provided that the controversies above referred to shall be settled by mutual agreement within fifteen days from the date of delivery of vouchers in support of my claim for $4000 in default of such settlement either party shall be at liberty to institute appropriate litigation in respect thereto and that no deduction from the present payment to me shall be made on account of the deposit of $500.

(Signed) C. M. CAMPBELL,
T. C. DANIEL,
S. C. REDMAN,
By T. C. DANIEL.

Jan. 7, 1904.

Answer.

Filed April 6, 1904.

In the Supreme Court of the District of Columbia.

Equity. 24463.

NORTHWEST ECKINGTON IMPROVEMENT COMPANY
vs.
CHARLES M. CAMPBELL.

The defendant for answer to the Bill in this Cause says:

1 & 2.

He admits the allegations of paragraphs 1 & 2 of the Bill.

9

3.

He admits that prior to the conveyance to him by the first named Complainant, hereinafter referred to, the said Complainant owned the real estate described in paragraph 3 of the Bill and says that as to so much thereof as has not been conveyed to Complainants Redman and Daniel and this defendant, and to Antonio Malnati the title is vested in said first named Complainant and this defendant as tenants in common in the shares of two thirds undivided to said Complainant and one third undivided to this defendant, he also admits that the Complainants Redman and Daniel are owners of a large majority of the stock in the said Complainant Corporation.

4.

He admits that negotiation between Complainants and defendant took place early in 1902 as a result of which a contract dated March 13th, 1902 was executed, a true copy of which is herewith filed and made part hereof as defendant's exhibit No. 1. The original will be produced whenever required.

He also admits that the project of forming a Sanitary Dwelling Company failed.

It is true that in connection with that enterprise defendant expended about the sum of $1045.00 for which he is entitled to reimbursement. It is also true that the relevant provisions of said contract were carried forward into a later contract hereinafter referred to.

5.

It is true that after the failure of the Sanitary Company project negotiations between complainants and defendant were resumed and they finally resulted in the execution of the agreement dated October 23, 1902, but which was not executed and delivered until November 27th, 1902.

Under the agreement embodied in the said agreement of March 13, 1902, as modified by the agreement of October 23, 1902 part of said land was conveyed and a loan obtained as set forth in paragraph 5 of the Bill.

The defendant admits that he has always claimed to be entitled to an absolute conveyance of one third undivided interest in all the land owned by the Corporation-complainant.

And he says that all the complainants fully recognized his right to such a conveyance and it was duly authorized and executed but he denies that said conveyance was made by way of security and says that in consideration of defendant's undertaking set out in said agreements the said conveyance was made to carry absolute title to defendant. The defendant admits the conveyance and encumbrances of the second parcel as set forth in paragraph 5.

6.

This defendant says that it is true that he and said Redman and Daniel as required by the said agreements incurred liabilities such as were contemplated thereby and all of which related to the enterprises contemplated. He denies that said Daniel advanced any money in connection with said building operation.

The cost of the houses was estimated by all the parties and the conclusion reached that the cost for ten houses would approximate $3200 or $3300 per house and such estimate has been verified by experience.

7.

This defendant admits the sale to Antonio Malnati and that he made claim as stated in paragraph 7 of the Bill and he says that all said claims were and are well founded and he admits the deposit of $4000 with Mr. Cull as set forth.

He says that he did give the complainants a preliminary account or list of checks, which purposely included checks paid out for the account of the Sanitary Dwellings Company, T. C. Daniel, and at the request of T. C. Daniel. He also says that in this list of checks there were some omissions to which he was entitled as a credit, and some erroneous entries. He denies that the result of said account when thus corrected is as averred in said paragraph and says that the complainants have erroneously included money paid for release of purchase money trust, costs of loans and other incidental expenses so that the actual cost of said houses was approximately $33,000 for the ten houses, and he says that he has in fact advanced approximately $4,000 [illegible] which he is entitled to reimbursement. He denies that he ever admitted that said sum so advanced by him should be reduced by the sum $2300 or any other sum. He has always been willing to and has never refused to account and he is now ready to account as fully and in such manner as may be deemed proper by the Court.

He admits he claims absolute title to one-third undivided of said real estate and he denies that the conveyance of said interest to him was intended as security merely. He admits that he claims his rights under said agreements but denies that he has ever refused to co-operate in the sale of said real estate. He has united in the use of the $4,000 deposited with Mr. Cull in paying on liabilities incurred in connection with said houses.

8.

He denies that he has in any wise failed to perform any of his obligations under the contracts set forth or refused to account or threaten- to embarrass the complainants in the development and sale of the property.

Further answering he says that he has incurred liabilities to a large amount for the cost of said building operation and the cost incurred in respect to said Sanitary Dwellings Company.

And has also guaranteed in writing the payment of about $32,500 balance due on purchase money of said real estate and other obligations.

He further says that complainants have diverse interests which cannot be litigated in the same cause in which they are co-complainants and he further says that the complainants have not in and by their said Bill made or stated such a case as entitles them to
11 any relief against this defendant and he claims the same benefit of these objections as if raised by demurrer.

CHARLES M. CAMPBELL.

I do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof, that the facts therein stated as of my personal knowledge are true and the facts stated on information and belief I believe to be true.

CHARLES M. CAMPBELL.

JNO. RIDOUT,
Sol'r for Def't.

Subscribed and sworn to before me this 5th day of April, 1904.

[NOTARIAL SEAL.] ALEXANDER H. GALT,
Notary Public.

DEFENDANT'S EXHIBIT No. 1.

Whereas T. C. Daniel and S. C. Redman of Washington D. C., acting for themselves and the Northwest Eckington Improvement Co. of the District of Columbia, a corporation incorporated under the laws of the State of Virginia, are owners of a certain tract of land in Northwest Eckington subject to trust, interest and taxes, fully described by the plats and printed matter of the above company, consisting of 10½ acres more or less, desire to dispose of the same, they hereby agree with C. M. Campbell of Washington, D. C., in consideration of one dollar in hand paid by him and other valuable consideration, that if he will organize or be instrumental in organizing a company, even with the assistance of T. C. Daniel or others, for the purchase of said ground, and give the necessary time and attention to that end, they agree, in case his plans work out so that they accept the consideration said company offers for said ground, to give him a third of the amount they receive, whether of money, stock or property, and that in the event of such sale or disposition of said property, he is to become possessed of an undivided one-third interest in the property. In case less than the whole tract is sold said Campbell is to become possessed of an undivided one-third interest in the amount sold.

T. CUSHING DANIEL. [SEAL.]
SAMUEL C. REDMAN. [SEAL.]
C. M. CAMPBELL. [SEAL.]

[Northwest Eckington Improvement Co. Seal.]

Approved and accepted,

NORTHWEST ECKINGTON IMPROVEMENT CO.
S. C. REDMAN, *Pres't.*
T. C. DANIEL, *Secretary.*

12 *Replication.*

Filed April 21, 1904.

In the Supreme Court of the District of Columbia.

Equity. No. 24463.

NORTHWEST ECKINGTON IMPROVEMENT COMPANY
vs.
CHARLES M. CAMPBELL.

The complainants hereby join issue upon defendant's answer.

RALSTON & SIDDONS,
Complainant's Solicitors.

Testimony for Complainant.

Filed July 27, 1905.

In the Supreme Court of the District of Columbia.

In Equity. No. 24463.

NORTHWEST ECKINGTON IMPROVEMENT COMPANY et al.
vs.
CHARLES M. CAMPBELL.

WASHINGTON, D. C., *October 15th*, 1904—
Saturday at 7:30 o'clock p. m.

Met, pursuant to notice, at the office of Ralston & Siddons Esquires, in the Bond Building, to take testimony on the part of the complainants in the above entitled cause.

Present: Frederick L. Siddons, Esquire, of solicitors for the complainants, and John Ridout, Esq., solicitors for the defendant, and the Examiner.

Whereupon, T. Cushing Daniel, one of the complainants, and a witness in his own behalf, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. SIDDONS:

Q. You may state, Mr. Daniel, your residence and occupation, and connection, if any, with the complainant Improvement Company—the Northwest Eckington Improvement Company. A. My residence is Woodley Inn; business real estate; I am secretary of the Northwest Eckington Improvement Company.

Q. Are you a stockholder in that company Mr. Daniel? A. I am, sir.

13 Q. Has Mr. Redman, the complainant, any connection with that company? A. Yes, Mr. Redman is the President of the Company.

Q. And a stockholder? A. Yes, sir.

Q. That company, Mr. Daniel, is it the owner of the property that is described in this bill of complaint, lot 35?

Mr. RIDOUT: Objected to, as the record is the best evidence.

A. Yes, sir.

By Mr. SIDDONS:

Q. Where is that property located, Mr. Daniels? A. It is situated just north of Eckington, on Rhode Island Avenue.

Q. And how much land is embraced in the tract, I mean which is still owned—about how much approximately? A. About 430 or 440 thousand feet.

Q. Can you tell me what that property is worth, Mr. Daniel? A. Yes, sir; it is worth on an average, now, 40 cents a foot.

Q. Is it encumbered, Mr. Daniel? A. Yes, sir, it has a trust of about $22,000 on it.

Q. How much? A. $22,000 about.

Q. That trust, does it cover all the land out there in which you have an interest, or the company? A. Yes, sir.

Q. Does it cover—this trust that you refer to—cover the houses that have been built out there? A. No.

Q. Now, Mr. Daniel, I would like you to state when, if ever, you discussed the matter of the improvement of this property with the defendant, Mr. Campbell—Mr. Charles M. Campbell?

Mr. RIDOUT: This is objected to on the ground that the relations between the parties to this suit are manifested by writing, and all the antecedent negotiations are merged in those writings.

Mr. SIDDONS (to the witness): Of course you understand that I am not asking you to give us the contents of any contract at all. I only want you to state when, if at all, you ever discussed the proposed improvement of this land with the defendant—when and where?

A. While in New York, in the fall of 1901, I remarked to Mr. Campbell that we owned a valuable piece of property near the proposed big railroad improvement, and I thought there would be a good deal of money in it, as there would be an industrial community of people settling in that section.

Q. That was in New York, you say? A. Yes, sir.

Q. And do you remember about when—can you recall when it was?

Mr. RIDOUT: Mr. Siddons, it is understood that my objection to this testimony runs through all the testimony concerning negotiations which afterwards culminated in contracts or conveyances.

Mr. SIDDONS: Yes, sir. There is no good of repeating the objection.

A. That was in the—well, about mid-winter, I suppose, and the latter part of 1901.

14 Q. When next was the matter, if at all, the subject of discussion between the defendant and yourself? A. After my return to Washington, when we were working the business of the Armat Motion Picture Company. Mr. Campbell mentioned he had been looking into the railroad developments, and the thought there was a go-d future in the property, and about March—about the first of March.

Q. March of what year? A. 1902, he made an investigation of the Washington Sanitary Dwellings Company, organized by General Sternberg, and others, and we talked over the plan of building up this property, and this eventuated in the contract with Mr. Campbell about March 13, 1902.

Mr. SIDDONS (to Mr. Ridout): Now, Mr. Ridout, have you that contract, the original?

(The contract was here produced by Mr. Ridout.)

By Mr. SIDDONS:

Q. Now, Mr. Daniel, as a result of these discussions, was any contract between yourself and the defendant, and the Improvement Company, proposed? A. Yes, sir.

Q. Who proposed it? A. Mr. Campbell drew up a contract, or had it drawn up.

Q. Is that the contract (exhibiting contract to witness)? A. Yes, sir; that is the original.

Q. In whose handwriting is that contract? A. That is Mr. Campbell's.

Mr. SIDDONS: I offer that in evidence, and it is agreed that it should be copied into the record.

(The contract referred to is filed by the Examiner, marked "Complaintants' Exhibit 1," and copied into the record, agreeably to the request of counsel, as follows:)

"WASHINGTON, D. C. *March* 13, 1902.

Whereas T. C. Daniel and S. C. Redman, of Washington, D. C., acting for themselves and the Northwest Eckington Improvement Co., of the District of Columbia, a corporation incorporated under the laws of the State of Virginia, are owners of a certain tract of land in northwest Eckington subject to trust interest and taxes fully described by the plats and printed matter of the above Company, consisting of ten and a half acres more or less, desire to dispose of the same, they hereby agree with C. M. Campbell, of Washington, D. C. in consideration of one dollar in hand paid by him, and other valuable consideration, that if he will organize or be instrumental in organizing a company, even with the assistance of T. C. Dan-el or others, for the purchase of said ground, and give the necessary time and attention to that end, they agree, in case his plans work out so that they accept the consideration said Company offers for said ground, to give him a third of the amount they receive, whether of money,

stock or property, and that in the event of such sale or di-po-
15 sition of said property he is to become possessed of an undi-
vided one-third interest in the property. In case less than the whole tract is sold then said Campbell is to become possessed of an undivided one-third interest in the amount sold.

[Northwest Eckington Improvement Co. Seal.]

T. CUSHING DANIEL. [SEAL.]
SAMUEL C. REDMAN. [SEAL.]
C. M. CAMPBELL. [SEAL.]

Approved and accepted.

NORTHWEST ECKINGTON IMPROVEMENT CO.
S. C. REDMAN, *Prest.*"
T. C. DANIEL, *Sec.*

By Mr. SIDDONS:

Q. Now, Mr. Daniel, in pursuance of that contract, what was done, if anything, and by whom? A. Mr. Campbell took active steps to organize the Sanitary Dwellings Company; had its prospectus printed, the company incorporated, and, for several months, endeavored to place the stock of this Company.

Q. Is that a copy of the prospectus which you referred to? (Handing witness paper.) A. (After examining same.) Yes, sir; it is.

Q. Who got that out? A. Mr. Campbell.

Mr. SIDDONS: I offer that in evidence. It is the copy of the prospectus for that company.

Mr. RIDOUT: Objected to as immaterial to this controversy.

(And the same is filed by the Examiner, marked "Complainants' Exhibit 2.)

The WITNESS: I will mention that about ten days after that contract was signed, that is the 23rd of March, Mr. Campbell stated that he was temporarily short of funds, and asked me would not I go up to the Citizens' National Bank with him and endorse a note for $2,000. I went up with him and he introduced me to the cashier, Mr. Moore, and stated that he referred to Mr. C. C. Glover, as to my responsibility, that I was a cousin of Senator Daniel's and had valuable property in the District, and would not he be satisfied with my endorsement on the note. He said that he would, and the note was discounted.

Mr. RIDOUT: The conversation concerning the promissory note referred to is objected to as immaterial.

Q. Who received the proceeds of that discount, Mr. Daniel? A. Mr. Campbell received the amount. It was placed to his credit, I think.

Q. Now, Mr. Daniel, what was the result of Mr. Campbell's work with the Sanitary Dwellings Company?

Mr. RIDOUT: That is objected to as immaterial.

A. Mr. Campbell worked on the sale of stock in the Com-
16 pany; employed others to assist him in placing the stock, but, after finding that he could not make it a success, he admitted the same to me, and asked whether something could not be done to save the thousand dollars that he had spent in that effort.

Q. Was the Dwellings Company abandoned then—that enterprise abandoned? A. Yes, we agreed to abandon the enterprise. Mr. Campbell then said he would undertake the building up of the property, model it on that same plan individually, and that it would be much to our interest to have that property improved and built up, and put in the shape of an income proposition, instead of letting it remain as unimproved land or lots.

Q. Well, did anything result of his suggestion in that direction? A. Yes, sir; we threshed it over for some time, and we looked at some of these two family apartment houses, and this eventuated in the contract of about that date.

Q. Do you remember what date, about when—can you tell when—you need not give the exact date, if you don't recall about the time of the year? A. In November of 1902, as I remember.

Q. Is that the contract? (Handing witness paper.) A. (After examining same.) Yes, sir.

Q. Who prepared that contract? A. As well as I remember, Mr. Campbell said Mr. Ridout drew it up for him.

Q. Mr. Campbell said Mr. Ridout drew it up? A. Yes, sir.

Q. Did Mr. Campbell bring it to you? A. He did.

Q. During the period, Mr. Daniel, that this first contract of March was in force, and at a period when this contract of October, 1902, was executed, what was Mr. Campbell's business, if you know? A. Mr. Campbell was manager of the Armat Motion Picture Company.

Q. Was he engaged in any real estate undertakings at all at any time during that period—I mean on his own account? A. Not that I knew of.

Mr. SIDDONS: I offer the contract of October 23rd, 1902, in evidence.

(And the same is filed by the Examiner, marked "Complainants' Exhibit 3," and copied into the record, agreeably to the request of counsel, as follows:)

"Whereas a contract was entered into March 13, 1902, between T. C. Daniel and S. C. Redman and the Northwest Eckington Improvement Co., a corporation, and C. M. Campbell, stipulating for the services of said Campbell, it is further agreed, while preserving to said Campbell any rights he may have under said contract, as follows:

1. In consideration of the services *of* said Campbell has already performed and for the purpose of securing his further services and co-operation in the handling and improvement of said property, it is agreed to make certain extension of the provisions of said contract.

2. It is now decided to release the Sanitary Dwellings Company, if necessary, form any obligations, it may have assumed in regard to any agreement to purchase said property.

3. The said Daniel, Redman and the Northwest Eckington
17 Improvement Company have decided to improve and market said property, as fast as may be possible, by building houses thereon.

4. To this end they desire to utilize the skill of said Campbell as a builder and his assistance financially.

5. It is agreed by said Daniel, Redman and the Northwest Eckington Improvement Company to employ said Campbell as a skilful builder in the erection of said houses, he to take charge of said work, with such assistance as the other parties to this contract may be able to furnish, and pursue such work industriously and with all the ability and skill he can bring to the work.

6. In the borrowing of the money that may be needed in developing said enterprise he is to use his credit by joining the other parties to this contract in the making or endorsing of any notes that may be required in negotiating the necessary loans for the making of said improvements and in paying off the loan of $32,000 now due on said property. In doing this account is to be taken of all moneys and interest he has already advanced under contracts in relation to said property already entered into between the parties hereto. And any sums advanced or to be advanced by any of said parties for the same purpose under said agreements is likewise to be accounted for.

7. It is proposed to erect at once five houses on said property and follow them with others as soon as such a course is warranted by the results and approved by the judgment of the parties to this agreement, said Campbell to industriously push said improvements with his best skill and ability, as provided in paragraph 5 herein, without any further compensation for his services than are provided for herein.

8. In return for said undertaking on said Campbell's part he is to become possessed of an undivided one-third interest in said property.

Witness our hands and seals this 23rd day of October, 1902.

NORTHWEST ECKINGTON IMPROVEMENT CO.,
By SAMUEL C. REDMAN, *Pres.*
THOS. C. DANIEL, *Sec'y.*
SAMUEL C. REDMAN.
T. C. DANIEL.
C. M. CAMPBELL."

By Mr. SIDDONS:

Q. I call your attention, Mr. Daniel, to paragraph numbered 5, and paragraph numbered 7 of this contract. Paragraph numbered 5 setting forth that Daniel, Redman and the Improvement Company agreed to employ Campbell as a successful builder in the erection of said houses. I ought to include, in calling your attention to these paragraphs, paragraph 3 as well, which recites that Daniel, Redman and the Improvement Company decide to improve this property we are talking about by building houses thereon, and, in paragraph 5, it refers to the agreement to employ Mr. Campbell in

the erection of houses, and paragraph 7 sets forth that it is proposed to erect at once five houses on said property, and follow them with others as soon as such a course is warranted by the results, and
18 approved by the judgment of the parties to this agreement.

Was the number of houses proposed to be built on this tract a matter of discussion between the defendant and you and the others. A. Oh, yes; that was one of the main features of the enterprise which was contemplated in the Sanitary Dwellings Company. It was to build up the property to accommodate the very large settlement of people that would go into that section of the District, on account of the building of these large railroad improvements, and Mr. Campbell, in discussing what he would do, he illustrated the fact of how the whole trust on the property could be paid off, and brought down a tabulated statement as to how profitable it would be to us.

Mr. SIDDONS (to the witness): Well, don't give the contents of it yourself. We will get that in.

Q. I ask you to look at that and tell me what it is. (Handing witness paper. A. (After examining same.) That is the plan that was outlined by Mr. Campbell, as to how he was going to work the building up of the property.

Q. In whose handwriting is it? A. Mr. Campbell's.

Q. Do you know when he brought you that? A. That was just about the time that the contract was signed up, November 23rd, 1902.

Q. That contract bears date October 23rd, 1902, and was it executed at that time, or later? A. I am not certain about that. I can't recall now. That was a part of the contract, the plan, in other words, upon which Mr. Campbell was going to turn this into income property and pay off the existing trust on the land.

Q. And this he brought to you about the time this contract was signed? A. Yes, sir.

Mr. SIDDONS: I offer that in evidence.

Mr. RIDOUT: Objected to on the ground of its immateriality.

(And the same is filed by the Examiner, marked "Complainants' Exhibit 4," and copied into the record, agreeably to the request of counsel, as follows:)

Five houses:

Annual & fixed charges	$2992
Income	2400
Shortage	592

Ten houses:

Charges	$3940
Income	4800
Surplus	860

Total charges per flat per mo. $16.50.

Fifteen houses:

Charges (Mrs. F. reduced to 24500 at 6%)	$4887
Income	7200
Surplus	2313

19 *30 houses:*

Charges (Mrs. F. Reduced to $15500 at 5%)	$7537
Income	14400
Surplus	6863

40 houses:

Charges (Mrs. F. Reduced to 9500 at 5%)	$9512
Income	19200
Surplus	9688

Total annual charges per flat per mo. $10. Houses covering about 1/3 of the ground or less. Deterioration not allowed for. Perhaps taxes insurance and repairs on each row of 5 houses should in consequence be placed at $400 instead of $300.

Disposal of first loan:

To Mrs. Franz & back taxes	$3000	
5 houses	9250	
Expenses of loan	250	
		$12500

Cash and Loan acc't:

Cost of 5 houses at $2800	$14000
Funds available	9250
Shortage 5 houses	4750

Annual charges on 4 houses:

Interest on 27500 Franz at 6%	$1650	
Taxes, insurance and repairs	600	
Interest on Shortage loan	440	(less back taxes)
Interest on trust 10 houses	1250	
		$3940."

By Mr. SIDDONS:

Q. Now, Mr. Daniel, in pursuance of this contract of October 23rd, what, if any, steps were taken towards the improvement of this property by Mr. Campbell, or the others connected, the Improvement Company and yourself and Mr. Redman? A. Mr. Campbell applied to the F. H. Smith Company for a loan of $12,500. We all three signed the application, and we found that it would be best to make these loans as individuals, as it was difficult for any corpora-

tion to borrow money, and a portion of this loan was used in——

Q. Well, before you get to that, Mr. Daniel, you stated that the application for this loan was made by Mr. Campbell and you and Mr. Redman. Who made the mortgage or deed of trust for that loan? A. It was done through the F. H. Smith Company. I think it was the Colonial Fire Insurance Company.

Q. Who made the deed of trust—who executed or signed the deed of trust? A. We all three signed the deed of trust.

20 Q. Well, then, before that deed of trust was signed, was any of the Improvement Company's property conveyed to you three? A. Yes, it was borrowed on five lots. It was to be deeded by the Northwest Eckington Improvement Company to Campbell, Daniel and Redman.

Q. How much was borrowed on the property so deeded to you three, Dr. Daniel? A. $12,500.

(It is agreed by counsel for the respective parties that, at the hearing of this case, the deed and deed of trust just referred to by the witness may be read in evidence, subject to the defendant's right to object to its admissibility on grounds other than the form of proving the conveyances.)

Q. I observe, Dr. Daniel, that the deed and deed of trust referred to by you just now were recorded in the land records here of December 6th, 1902. Can you tell me how soon after that date, or about it, whatever may be the fact, the actual building of those houses commenced? A. I should think about the 10th or the 15th of the month.

Q. The 10th or the 15th of December? A. Yes, sir.

Q. By the time two thirds of January, the following January, had passed are you able to state what progress had been made with the construction of those houses—how far they had advanced, when about two-thirds of January had passed—are you able to state what stage of progress these five houses had reached? A. Well, I judge about the foundations had been laid.

Q. After the loan just referred to had been effected, did Mr. Campbell ever call on you, or the Improvement Company, or Mr. Redman, if you know, for any order on the proceeds of that loan? A. Yes; he requested me and Redman to sign an order on the F. H. Smith Company to pay the money over to him.

Q. What was their relation to the loan? A. They made the loan for the Colonial Fire Insurance Company.

Q. Was that order signed? A. Yes, sir, Redman and myself signed it. I reckon they have got it in the records downstairs.

Q. Did Mr. Campbell submit any plans or estimates as to the cost of these houses to you, or to the Improvement Company, or Mr. Redman? A. He only brought down a sheet of paper with, as he termed it, the different bids on the work.

Q. Have you got that? A. Yes, I have it somewhere.

Q. Can you tell us what form it was in? A. It was just a plain sheet of paper with the figures on it.

Q. Is that it? (Handing witness paper.) A. (After examining same.) Yes, sir; that is the original.

Q. Well, did he ever submit you any plans and specifications of the houses? A. Yes; he first had some plans made by an assistant in Waddy Woods office of houses that would, if I remember, have cost a thousand dollars more apiece than the ones that we afterwards adopted. We went up to see some houses built by Wardman, two family apartments, and then some on R Street that Nick Grimm had built, and we adopted practically the Grimm plans.

21 Q. Where are these plans and specifications? A. Mr. Campbell, I think, has them. I haven't any of them.

Q. Was there any general building contractor employed by Mr. Campbell for this work? A. No; Cr. Campbell put in charge a Mr. Wallace that he——

Q. Who is he? A. He had been working for Mr. Campbell on some other building enterprise, and he was put in charge up there, and he told me that Wallace would charge about $2.50 or $3.00 a day, and he would superintend the construction of the houses.

Q. What is Wallace's business, if you know? A. He is a carpenter and contractor.

Q. Was there any written contract made with him, do you know? A. He may have had one with Mr. Campbell. I never have seen such a contract.

Q. If there was one, it was never submitted to you? A. No, sir.

Q. Or to the Company? A. No, sir.

Q. Or to Mr. Redman? A. No.

Q. Now, coming back to the estimates for these houses. Did I understand you to say that that paper was the estimate that he had submitted to you? A. Mr. Campbell stated that, after he had received all the bids under the plans that I have just mentioned, that this would be the cost of the houses.

Q. Cost of the houses or cost per house? A. The cost as I have illustrated there; all of them, you know.

Q. That is the only estimate that you ever saw? A. Yes, sir.

Q. In whose handwriting is that? A. Mr. Campbell's.

Mr. SIDDONS: I offer that in evidence.

(And the same is filed by the Examiner, marked "Complainants' Exhibit 5," and copied into the record, agreebly to the request of counsel, as follows:)

"Brick & bricklaying	4300
Architect	75
Carpenter	800
Concrete	650
Electric work	95
Gal. iron	196
Gas fixtures	200
Hardware	250
Latrobes & ranges	465
Insurance	25
Lumber	1510
Millwork	1368
Plastering	1325

Plumbing	1900
Papering	
Painting	480
Stone	239
Slating	125
Surveying	12
22 District Charges	20
Sewer Extension	90
Gas Service	50
Blue prints	10
Mantels	400
Cost of loan	141
Loss of interest	300
	15650

5)15650

3130 each.

10 H. $3.130 each	$31.300	
10 H. sell for 500		$50.000
		31.300
20 H.		18.700
		2
		$37.400"

By Mr. SIDDONS:

Q. You have stated, Mr. Daniel, that the paper just offered in evidence, this estimate, Mr. Campbell handed you as a result, so he stated, of the bids that he had got in? A. Yes, sir.

Q. Did he exhibit the bids to you? A. No, sir.

Q. Did he offer to show them to you? A. He never did.

Q. So that your only knowledge of the bids that he obtained was based upon his statement to you when this paper was given to you by him? A. Yes, sir.

Q. When Mr. Campbell engaged in these negotiations with you, which led up to the contracts of March and October, were any statements made by him with respect to his knowledge of building operations? A. Yes, sir, he stated that he thought he could build houses cheaper than any man in the District; that he had no trouble about getting all the accommodation and the closest figures on material; that he had already succeeded in getting a loan and carrying on the building of houses on the hill that he was then about to construct, or in the course of construction.

Q. What hill do you mean? A. Harvard Street, Columbia Heights, and Columbia Road, or both.

Q. He was building there on his own account, he stated? A. Yes, when the last contract was signed.

Q. Do you know to what the extent of these building operations went? A. Well, they involved, as I understood at the time, eighty

or ninety thousand dollars. He had negotiated loans, as I understood, for something like half the amount.

Q. Do you know how many houses he was building on his own account at the time, or approximately? A. Either ten or twelve, I don't remember exactly.

Q. When this loan, the first loan of 12,500 was obtained,
23 and Mr. Campbell got that order from you and Mr. Redman, did he take charge of the building operations at Eckington? A. Yes, sir.

Q. Did you, or Mr. Redman, or anyone else connected with the Improvement Company, assume any direction in the work of construction? A. No, sir.

Q. Did Mr. Campbell ever consult you or Mr. Redman, or anyone connected with the Company, with respect to the character of work or material that were going into these houses—did he ever call on you to inspect any of it? A. Mr. Campbell, when he came up to the office of the Armat Company, would ask me to go out and see how the job was progressing. I went out with him and heard him giving instructions and directions to parties working on the buildings.

Q. Going back a little bit, when Mr. Campbell submitted that estimate or cost per house, or all the houses, was there any agreement arrived at between you and him and Mr. Redman and the Improvement Company regarding that cost? A. I told Redman what the cost of the houses would be from the bids that Mr. Campbell had tabulated in that little statement, and we both agreed that that cost house would be the proper kind to build out there.

Q. Was that communication to Mr. Campbell? A. Oh, yes, he understood that we agreed to it.

Q. When was it, Mr. Daniel, that Mr. Campbell first asked you to have the Company execute a deed for an undivided third interest in the property to him?

Mr. RIDOUT: That is objected to as immaterial and incompetent, because of the fact that the negotiations are merged in the conveyances and contracts.

A. Mr. Campbell brought that question up at the 617 E Street office of the Armat Motion Picture Company, and told me that he was going to put a whole lot of money in this enterprise, and that he thought he ought to have some security on the record; that otherwise the Eckington Company might transfer the property without his having any control over the matter at all, and he brought the question up again in a few days, and said he had had such a contract prepared, and wanted to know whether it could not be executed.

Q. Can you state, Mr. Daniel, with reference to the stage of progress of these first five houses, when Mr. Campbell talked to you on that subject? A. Well, I would imagine the foundations had been just about laid, and they were starting on the superstructure when he brought that agreement down. I rather objected at first, and he brought it down to me sometime in January.

Q. January of what year, do you remember—well, I think there is no question about that, 1903? A. 1903, and he said that Mr.

Ridout had drawn that contract up for him, and he didn't see any reason why we should not sign. I sat there at the window and read it over pretty carefully, and when I saw that it was a deed for a one-third undivided interest I knew or thought that it tied Mr. Campbell to the proposition so that he could not get any way of deeding that third interest away until he had earned it by the carrying out of his contract, and, thinking it over, it seemed
24 to me that it would be a rather reasonable request, if he was going to put in a great deal of money to build up that entire property, and I thought he should have insisted upon some security on the record; I think I would have insisted upon something like that myself, and it was a business proposition, and I submitted it to Mr. Redman and told him I did not think there was anything wrong about it——

Q. Don't tell anything that transpired between you and Redman unless Campbell was present. A. (Continuing:) Well, cut that out. I told Mr. Campbell, after thinking it over, I would be perfectly willing to execute that as security to him, to protect him.

Mr. SIDDONS: I think, at this point, Mr. Examiner, that I will offer the deed in question; the deed from the Northwest Eckington Improvement Company to Mr. Campbell in evidence, and it will be read in the same way. There is no objection to the form of proof of the deed.

Q. That deed, Mr. Daniel, is dated January 16th, 1903, and recorded on January 19th, 1903. Do you know whether at that time Mr. Campbell had, in fact, advanced himself any money on account of this enterprise—I mean the building operations? A. I really could tell nothing about it, because Mr. Campbell did not keep me posted as to the times he checked money out of the $12,500 loan on these houses. At that time I believed that he was going to carry out the contract, and it would be all satisfactory.

Q. My question refers, Mr. Daniel, if you know it, of course, to money advanced by Mr. Campbell at that time for that building operation, and not for any other previous advances that he may have made for the Sanitary Dwellings Company project. A. Oh, no, he didn't say anything about that.

Q. You don't know whether, in fact, he had advanced any money out of his own pocket at the time this deed was executed? A. No, sir, I do not.

Q. Did Mr. Campbell, as he received money from the loan—funds from the proceeds of this loan—inform you or the Improvement Company, or Mr. Redman, if you know, of the use he was making of it? A. No, sir, he did not. I took it for granted that he was building up the houses with it.

Q. Mr. Daniel, were there any other houses projected to be built on this porperty of the company? A. Oh, yes.

Q. Besides the five that we have been talking about? A. Yes.

Q. What houses were they—how many? A. Five more of a similar character were started before these were even finished.

Q. What steps were taken by the company and Mr. Campbell

towards the construction of those houses? A. We repeated the first plan of borrowing $12,500 more and turning it over to Mr. Campbell to use in the building enterprise.

Q. In that case, then, there was a similar conveyance from the Improvement Company to Daniel, Redman and Campbell? A. Yes, sir.

Q. And then, they executed a deed of trust? A. Yes, sir.

Q. From whom was the loan obtained, and how much was it? A. It was gotten through the F. H. Smith Company, $12,500——

25 Mr. SIDDONS: I offer in evidence, and will read at the hearing, the deed from the Improvement Company to Campbell, Daniel and Redman, dated March 31st, 1903, and recorded on May 1st, 1903, in Liber 2708, Folio 342. Then I offer in evidence the deed of trust referred to by Mr. Daniel just now securing the additional loan on that property of $12,500.

Q. Who proposed the building of the second of these five houses, can you tell? A. Mr. Campbell. He kept right on at the work.

Q. During the progress of these building operations, did you or Mr. Redman, or the Improvement Company, or all of any of you, sign or endorse any notes at Mr. Campbell's request? A. Yes. Mr. Campbell started in very early to ask us to endorse notes for the parties who were furnishing building material.

Q. Are you able to state from memory when he asked you first to endorse or make a note for this enterprise, or represented to you to be for this enterprise? A. Yes; he asked us to endorse some notes just about the time that the foundations were dug, to Fahey & Company.

Q. Mr. Daniel, can you tell when these buildings were completed? A. You mean the first five?

Q. Just as you can state it. I want to know the date at which they were completed, as near as you can give it. A. The first five were completed about the middle of June, 1903.

Q. And when were the second lot completed? A. About March of the next spring, as I remember. That would be March, 1904.

Q. Were the second five a year building? A. It would not be a year from June until March.

Q. The second deed of trust was recorded about May 1st, 1903. A. I can't recall definitely. I know the first five houses were completed in June.

Q. June, 1903? A. Yes.

Q. You don't remember when the second lot were finished? A. I don't remember when the second were finished, no.

Q. During the building operations, Mr. Daniel, did Mr. Campbell ever endeavor to get you and Mr. Redman to sign any other contract or agreement relating to this matter?

Mr. RIDOUT: I object to that unless such contract was ultimately signed, in which event the negotiations would be incompetent, and for that reason objected to.

A. Yes.

Q. Can you tell me about when that was? A. That was about July, 1903.

Q. I wish you would state, please, just the circumstances of his application to you.

Mr. RIDOUT: The same objection.

A. Mr. Campbell came down to the Ames Building, 1410 G Street, where I had an office—first, by the by, I will state, by way of beginning, that I was passing the Washington Savings Bank one day with Mr. Campbell, and he said there was a note due
26 over there on the Northwest Eckington Improvement Company's building operations, and that he had to go over and pay out the cash to fix it up, and that as he was paying out cash, he thought he ought to have some contract by which the cash would be returned to him. I mentioned to him that that had already been provided for in the last contract that he had. He stated that he did not remember seeing it in there, and that if it was not that he would like to have one executed that did provide for the return of this money that he was paying out. I told him that I had a copy of the contract at Woodley Inn, and that I would look it up and see if it did not have that provision in it. I found the contract out at the Inn and read it over, and found that it did. It stated that any money advanced by any of the parties should be accounted for. I came down to the office the next day and Mr. Campbell brought in a contract which he said he would like for me to sign; that it had been drawn up for him by his attorney. I told him all right, to let me have it and I would look it over.

Q. Mr. Daniel, what contract was that that you examined at Woodley Inn, as you have just stated in your testimony? A. It was a new contract that Mr. Campbell stated that his attorney had drawn up for him, and he wanted Mr. Redman and myself to sign it.

Q. I think you are mistaken. You are talking in your testimony about the contract which you quoted the language of, that all money advanced by any of the parties should be accounted for. A. I thought I had gotten off of that.

Q. Referring to your answer, Mr. Daniel, in which you stated that Mr. Campbell told you that he wanted a new contract signed providing for the re-payment to him of advances that he might make, and you told him that you thought the last contract executed already provided for that, and that you examined that at Woodley Inn that evening, now what contract are you there talking about? A. I am speaking about the contract of October 23rd.

Mr. SIDDONS: Now, Mr. Ridout, I think that proposed contract is what I asked you to produce at this hearing.

Mr. RIDOUT: Counsel for the defendant states that, being of the opinion that a paper not executed by the parties to this litigation is not competent evidence for any purpose, declines to produce such paper.

By Mr. SIDDONS:

Q. By the way, did you take a copy of that contract? A. No;

I put it in my drawer, and Mr. Campbell came back and got it after I——

Q. Now, go on, please, and state what occurred the next day, when Mr. Campbell again called on you—did you keep a copy of the contract that Mr. Campbell tendered to you to sign? A. No; I brought the proposed contract that Mr. Campbell wanted me to sign, that is, the two contracts, back down to the office, after reading it over, and discovering in that contract that it was a verbatim copy of the one of October 23rd, 1902, with the exception that in
27 one of the paragraphs it stated that Mr. Campbell, having complied with his agreement, is entitled to a one-third interest in the property of this company. Now, Mr. Campbell came into the office, Room 11, Ames Building, at half past ten o'clock, and he says: "Daniel, have you got that contract that I want you to sign with you? I have telephoned Redman to come up here and sign it this morning." I said: "Campbell, I have read that contract over, and I can't sign it, for the simple reason that if we did sign that contract you would be relieved of all future responsibility in this whole transaction, and have a deed for a one-third interest in the property before you complete your contract. For that reason I won't sign it, and I won't advise Redman to sign it," and I laid it back in the drawer. Mr. Campbell, after saying "Well I am advised by my attorney that that is the kind of contract I ought to have, and I will leave a little memorandum on your desk here, so that you won't misunderstand my position in this matter," and he left a little memorandum on the desk, and then he came back in about a minute and a half and said: "Let me have that contract, won't you?" and I gave it to him.

Q. Did you have a conversation with Mr. Redman regarding this proposition of Mr. Campbell's—regarding Mr. Campbell's application for the execution of this proposed contract? A. Yes, sir; I told Redman about it, and——

Q. Well, never mind; don't state anything except that you told him. I don't remember, Mr. Daniel, whether you stated about when this occurrence took place. A. July.

Q. July, 1903? A. About the middle of July, yes.

Q. Had these houses been completed then? A. No, sir.

Q. You spoke just now of Mr. Campbell leaving the memorandum on your desk at the time he endeavored to get you to sign this new contract. Is that the memorandum, sir? (Handing witness paper.)

A. (After examining same.) Yes, sir. He wanted me to show it to Redman, just as he left it there.

Q. Whose handwriting is that? A. That is Mr. Campbell's.

Q. Is that date in his handwriting? A. No, I dated it.

Q. This note or memorandum, Mr. Daniel, seems to me to be incomplete. Do you know whether there was any more of it or not? A. Yes, there was some that extended over on the other sheet, but it has been misplaced; I can't find it.

Q. Can you recall what followed in it? A. "Of his attorney," was the next.

Q. Do you think there was any more of it? A. I can't recall whether there was or not.

Mr. SIDDONS: Well, I offer it in evidence.

Mr. RIDOUT: Objected to on the ground that it is not competent evidence in any aspect of the case, and, on the further ground, that it is manifestly incomplete.

(The same is filed by the Examiner, marked "Complainant's Exhibit No. 6," and copied into the record, agreeably to the request of counsel, as follows:)

28 "JULY 20TH, 1903.

To Mr. Daniel & Mr. Redman:

The state of the Eckington account ought to be stated, to see how much has been advanced by C. M. Campbell.

It is manifest that if he keeps on advancing more money in case the necessity arises he should be as fully protected as a bank would be. In case a bank advances it we would all willingly sign the notes, which would have to be taken care of.

Mr. Daniel thinks the present contract adequate. Mr. Ridout, Mr. Campbell's attorney, thinks not. Mr. Campbell prefers to be guided by the advice"——

By Mr. SIDDONS:

Q. Mr. Daniel, during the progress of these building operations with Mr. Campbell, was he ever called upon by you, or anyone connected with the Improvement Company, to render statements of account of his operations, his receipts and his disbursements? A. Yes; as the first five houses were completed we wanted a statement to show the amount of their cost and outstanding obligations.

Q. Did you ever get one from him? A. Never did. We asked very frequently for it.

Q. What reply did he make? A. Said that he was very busy with his houses on the Hill, and had a whole lot of book-keeping enterprises to be fixed up, and so on, but he would try to get it up for us from time to time.

Q. Did he ever furnish you with a statement of account? A. He never did, up to the time that he rendered this one, about the 1st of January.

Q. Aside from that one, which we will deal with a little later, he never gave you any statement of account? A. Never.

Q. Did he ever submit exhibit vouchers to you for his expenditures? A. He never did.

Q. Did you ever ask him to? A. Yes, sir, very often.

Q. Mr. Daniel, during the period in which these building operations were in progress, was any part of the Improvement Company's property sold? A. Yes; there were negotiations opened up with Mr. Antonio Malnati.

Q. Who made those negotiations? A. Mr. Burnley was the salesman who first interviewed Mr. Malnati, and submitted the property to him, and that was followed by a visit that I paid the old gentle-

man, and the negotiations extended over two months before we eventually landed him.

Q. Was Mr. Campbell made familiar with that fact? A. Yes; he was told of the progress of things.

Q. Was there a contract of sale made with Malnati? A. Yes; Malnati made a deposit on the property, and we gave him a deposit receipt.

Q. Is that the deposit receipt? A. That is the copy of the original receipt, yes, sir.

Q. That is the copy of the original? A. Yes, sir.

29 Q. Where is the original? A. I think the old gentleman has got that.

Q. That was taken up when the sale was consummated? A. I left it with him, you know, at his house, when I received his deposit, $500. I signed it for the Northwest Eckington Improvement Company, as treasurer.

Mr. SIDDONS: Counsel for the complainants will produce and offer in evidence the contract of sale with Mr. Malnati referred to by the witness.

Q. When the contract for the sale to Malnati was made, Mr. Daniel, did you have any conversation with Mr. Campbell regarding the disposition of the proceeds of the sale when consummated? A. Not for quite a little time after the deposit was made by Malnati. I took it for granted that it could be used in the obligations of the Company. I didn't say anything about it until about ten days before the sale was closed. Mr. Campbell came to the office, and I got up to go down on F Street, and he followed me out of the office, and as we went down on Fourteenth Street towards F, he wanted to know whether he was not to get the money that he had advanced out of the Malnati sale. I told him no, I didn't think that that was a proper way to disburse the money; that the contract that he had had stated that money advanced by any of us should be accounted for, not paid out of the sale of the land; that this money should be used in paying off the obligations on the houses, and to release the land sold Malnati by a certain payment on the trust.

Q. What advance did Mr. Campbell claim that he had made at the time of this conversation? A. He did not state the amount at all, but I told him at the time, I said: "Campbell, bring in your account and let's see how the thing stands." I said: "Let us know the situation." I said: "You can't make any demand anyhow until you give us an account as to how we stand in this matter." We walked on down F street together and, just as we got near Eleventh Street, he said, "Well, I am not going to stand for that money to be paid out any other way, and I am going to have my cash out of the thing, or the thing don't go through; I will tell you that just now." I said: "You need not take that view of it." He said: "I propose to consult my attorney right now; I am not going to stand for it." He said: "If I don't get it, I will throw the matter in the hands of a receiver." I said: "Since you take that stand in the matter, you have lost your head." I said: "You take any steps to break up the

sale, or to injure the Northwest Eckington Improvement, Redman or myself, and I will move to cancel your contract." He said: "I am going to see my attorney now, and I am going to see Mr. Redman." Then he brought down a statement——

Q. Before you come to that, Mr. Daniel, can you give me any idea of when this conversation you have just related occurred? A. About December 26th, 1903. Mr. Campbell told me the next day that he had had a book-keeper working on the statement for about two or three weeks, and he was going to try to get it out, and just about three or four days before the money was to be paid over
30 by the Title Company, he came into the office and laid down a statement, and said: "Now, there is my statement of this account, and there is the balance that is due me." I looked at the account and saw that he had figured out so that we owed him something about over $4000, and John Mitchell, who was in the office, got up and walked to the desk, and he looked at it and he said: "That is a kind of a curious account"——

Mr. RIDOUT: Well, I object.

Q. Was Mr. Campbell present? A. Yes, he was there. "That is a curious kind of a statement, Mr. Campbell; I don't see any vouchers at all." Mr. Campbell said: "That is all right about that, if there is any mistake in it it is against me." He says: "That is the amount that is due me that I have advanced."

Q. Is that the statement? (Handing witness paper.) A. (After examining same.) Yes, sir, that is the statement.

Q. That memorandum, I notice, is signed by Mr. Mitchell and Mr. Burnley. That was before or after he left it with you? A. That was put on at the same time, or the next day. Both Mitchell and, as I remember, Mr. Burnley were there when the account was left.

Q. When the account was left by Mr. Campbell? A. Yes, sir. I took that account and went over it, and I discovered——

Q. Well, now, Mr. Daniel, we will go into that after a little bit.

Mr. SIDDONS: I offer that statement in evidence.

Mr. RIDOUT: If Mr. Siddons will say that he offered it, excluding the memorandum made on the front of it there, then I won't have to object.

Mr. SIDDONS: Oh, yes, I offer merely the statement. I do not offer the memorandum appearing on the statement purporting to be signed by John E. Mitchell and C. D. Burnley.

Mr. RIDOUT: No, the handwriting at the top signed by Mr. Daniel.

Mr. SIDDONS: No, nothing here but the statement itself. The statement consisting of seven pages.

(And the same is filed by the Examiner, marked "Complainants' Exhibit No. 7.")

By Mr. SIDDONS:

Q. Mr. Daniel, did Mr. Campbell submit any vouchers in support of this statement of account to you? A. Not a one of any kind.

Q. Mr. Daniel, with reference to the negotiations in this sale to

Malnati, and the signing of the contract for the sale to Malnati, was any demand made on Mr. Campbell for a statement of the account? A. At that time?

Q. Yes, at that time. A. Yes.

(Without concluding the direct-examination of the foregoing witness, an adjournment was here taken until Wednesday October 19th, 1904, at 7:30 o'clock, p. m.)

31 WEDNESDAY, *October 19th*, 1904—7:30 o'clock p. m.

Met, pursuant to adjournment.

Present: Frederick L. Siddons, Esq., of Solicitors for the Complainants, and John Ridout, Esq., Solicitor for the Defendant.

Whereupon T. CUSHING DANIEL, having been heretofore duly sworn, was recalled and further interrogated.

Direct examination.

By Mr. SIDDONS:

Q. Mr. Daniel, recurring to the property owned by the Northwest Eckington Improvement Company involved in this suit, I wish you would state its capacity for the kind of improvement and development mentioned in the contract of October 23, 1902? A. Well, there is about eighty-five or ninety building lots by an average size of twenty by ninety, and the plan was to build up the property and accommodate the population that would settle out in that neighborhood, the property having water and sewer facilities.

Mr. RIDOUT: So much of the answer as undertakes to state the plan of operation among the parties to this cause is objected to, because the plan of operation is the subject of written agreement.

Q. Mr. Daniel, did Mr. Campbell ever take any steps towards preparing this land for the contemplated improvement, beyond the preparation for the building of the ten houses that you testified about the other night? A. Yes. After Mr. Campbell had started the second row of houses, he thought it would be a good plan to close up Albany street and subdivide the lower portion of the property differently from the map that we then had of the property.

Q. Map of subdivision? A. Yes, map of subdivision that we then had of the property.

Q. Well, what did he do in furtherance of that idea, if anything? A. He went down to the Surveyor's office and worked over the new plan of subdividing the property to build these two family apartment houses, having determined that a lot twenty by ninety feet was the best size, and he paid a young assistant in the office, I think, $10 for making a map that was delivered to him, and I kept it at the office ever since.

Q. Did Mr. Campbell bring that map to the office? A. Yes, sir.

Q. Is that it? (Handing witness map.) A. (After examining same.) Yes, that is the map. I will also state that the North side of Rhode Island Avenue was in shape to be built up, and would

accommodate about twenty-five or six more of these two family apartment houses. The plan of Mr. Campbell also contemplated building that up sometime later.

Mr. SIDDONS: I offer this plat in evidence.

Mr. RIDOUT: Objected to as immaterial.

(And the same is filed by the Examiner, marked Complainants' Exhibit 8.)

32 Q. Mr. Daniel, can you state when it was, or about when, that Mr. Campbell brought this map to you—this plat to you? A. As I remember, it was in June or July, 1903.

Q. Mr. Daniel, coming to the so-called statement of account that Mr. Campbell handed you, that you were testifying about the other night, did you examine that account? A. Yes, I did.

Q. Are you able to state, from your examination of it, how accurate and complete it was?

Mr. RIDOUT: Objected to, because the account speaks for itself.

A. Mr. Campbell delivered that account. I took it up and looked over the different items, and I found a good many duplicate entries, and a great many charges that did not belong in the account, and I was very much surprised and astounded to find that it was a forced statement of a balance, and deprived me of all confidence in the statement as being an honest presentation of the account.

Q. Are you able to specify, Mr. Daniel, any of the items in this account that you just now stated and claimed was inaccurate and duplicates? I hand you the statement and ask you to specify, if you can? (Handing same to witness.) A. (After examining same.) The third entry of June 16th, entered paid on a trust, $500, is identical to the next entry of June 17th, in which he charges T. C. Daniel with the same $500. He also has a number of charges here to C. D. Burnley that has no connection with the building enterprise, and it would take me a long time to enumerate all the improper entries in this very long statement, but I had a book-keeper to analyze it——

Mr. RIDOUT: One moment. Let the book-keeper talk about it.

The WITNESS (continuing): To analyze it, and he found many other items and will point them out seriatim.

Q. Mr. Daniel, did you find any entries on this statement of account that were not disbursements of cash? A. Yes, I found that a good many notes that we had signed and Mr. Campbell had used in payment for building material and supplies, that he had charged up as being cash paid out.

Q. When you say they were notes used by Mr. Campbell in paying material men, do you mean notes that were given to material men in settlement of their accounts, or notes that had been discounted at a bank and the cash realized and paid out? A. Notes of ours, that is signed or endorsed by Redman and myself, and given by Mr. Campbell to the material men and supply men.

Q. Could you look at this statement and specify any of those, Mr. Daniel? A. Well, there are a great many of them, Mr. Siddons, and

I don't know that I—I can look them up, though, and give you a good many of them, if you want it.

Q. Well, I will have to ask you to do that. A. Very well. I found on this statement several items, amounting to something like $750 charged to Mr. A. M. Cowell, which Mr. Cowell never received, but he had credited similar payments for the money paid to him by Mr. Campbell on his individual building enterprise on Columbia Heights.

33 Q. Now, Mr. Daniel, when you received this statement of account from Mr. Campbell, what did you say to him? A. After looking it over, I told Mr. Campbell that under no circumstances could we accept that as a statement of account, and that we had demanded vouchers, and we would have to have a proper account rendered on the building enterprise.

Q. Did Mr. Campbell ever see you again about that statement of account—I mean the one that he left with you? A. Yes, he came back a short time after that and asked me to give it to him.

Q. What did you say—what did you tell him? A. I declined to do it.

Q. In paragraph 6, of Mr. Campbell's answer, Mr. Daniel, he denies that you advanced any money in connection with the building operations that were actually undertaken. What have you to say in regard to that? A. I will state that I advanced from time to time a good many checks to Mr. Campbell, which he collected and paid out, one or two of them, to Mr. Cowell. I don't know what disposition he made of the others, but I went down to the bank and have gotten them all, and they are correct, those checks, as far — I know, with the exception of one check for $200, which Mr. Campbell—that he wanted me to exchange checks with him, and he never brought his check down for the $200 one, and, then, he asked me on another occasion to give him a check for $107, I think, and fifty cents; that he would bring me down his check the next morning for it, which he has never done.

Q. With the exception of those last two checks which you have referred to, what became of the other checks that you stated you have given him? A. I have them here.

Q. I hand you some checks, Mr. Daniel, and ask you to state if they are the checks in question? (Handing witness checks.) A. (After examining same.) Yes.

Mr. RIDOUT: All testimony concerning transactions between Mr. Campbell and Mr. Daniel, concerning checks given by Mr. Daniel to Mr. Campbell, or exchanged by them, is objected to because foreign to the purpose of this suit, which does not contemplate the settlement of any individual accounts between Mr. Campbell and Mr. Daniel.

Mr. SIDDONS: Counsel for the complainant states that, in offering these checks, he is not offering them as some private matter between Mr. Daniel and Mr. Campbell, but in support of the allegations of the bill alleging financial advances of money made by the complainant, Daniel, to Mr. Campbell in and about and for the building operations, as the complainant Daniel understood it.

Q. What were those checks given to Mr. Campbell for by you? A. Mr. Campbell would ask me to raise these different amounts at different times; that he was temporarily short himself on the account—building account or building enterprise, and I gave them to him.

Q. Were those checks paid? A. Yes, sir.

Mr. SIDDONS: I offer the checks in evidence, eight all told.

34 (And the same are filed by the Examiner, marked Complainants' Exhibits Nos. from 9 to 16, both inclusive.)

Q. Mr. Daniel, in these eight checks, I observe that two of them are made payable to the order, in one case, Albert M. Cowell for $150, and the other to A. M. Cowell for $200. On what account were they made? A. They are charged up on Mr. Campbell's account there to Mr. Cowell. I gave them to Mr. Campbell to help him to pay Cowell, you know, at different times. He has charged them to Cowell on this statement he rendered us.

Q. The amounts represented by those checks appeared on Mr. Campbell's statement of account to you? A. Yes. I think both of them do.

Q. How, Mr. Daniel, do these two checks come to be made to the order of A. M. Cowell? A. Mr. Cowell came in the office, and Mr. Campbell was in the office at the time, and he asked me to——

Q. Who did? A. Mr. Campbell, to pay Mr. Cowell these amounts; that he was short on his bank account, and I made them all to Mr. Cowell, and handed them to him, or Mr. Campbell handed them to him, at the time they were made off.

Q. I notice, Mr. Daniel, that one of these eight checks is—the one dated December 4, 1903, is made payable to the Citizens' National Bank, and is for the sum of $107.95. What is that for, can you tell us? A. I can't recall now.

Q. Was that check drawn by you at Mr. Campbell's request? A. Yes, given to Mr. Campbell. I don't see why his name is not on the back of it, but he don't deny that he got the money for it, I reckon. I have the stub of my check book showing what it was for.

Mr. SIDDONS: Well, don't state what is on the stub of your check book.

Q. Another of these eight checks, Mr. Daniel, dated December 2, 1903, is made payable to the order of cash for $3.63, and it is endorsed by S. M. Wallace. Can you tell me why that check was drawn, and at whose request, if any one's? A. Yes. I remember Mr. Wallace came in and he said he could not find Mr. Campbell, and he needed money for some purpose on the Eckington buildings, and I gave it to him. I would like to state, in that connection, that I gave Mr. Campbell a check for $600 that I do not see in that batch of checks.

Q. When was that done, and how did you come to give him such a check? A. He came down and said that he wanted me to raise him some money to pay these obligations on the Eckington buildings, and I went down to the Second National Bank and discounted a note down there for $600, and gave him the proceeds of the note, $600.

Q. Have you got that check—do you think you could produce it, Mr. Daniel? A. No. After the rendering of Mr. Campbell's statement and my ascertaining that he had overcharged the building enterprise, when that note came due I took it up and sued Mr.
35 Campbell for the amount—for a balance of $450 that was then due, and he has paid $350 of it.

Q. Mr. Daniel, of the various notes that you have testified Mr. Campbell secured you to endorse, or to make in and about these building operations, were any of them protested at any time? A. Yes, sir; quite a number of them were protested.

Q. Coming down to the date when the Malnati sale was closed, on or about January 9, 1904, and the period intervening between that and the time when Mr. Campbell finally consented that the $4000 in Mr. Cull's hands could be drawn upon for the payment of maturing obligations in this enterprise, were any of the notes protested? A. Yes, sir, a great many were protested.

Q. I hand you, Mr. Daniel, a number of notes, and ask you if any of those represent notes protested in that period that I designated in my previous question? (Handing witness notes.) A. (After examining same.) Yes, sir, I think every one of those were; every one in this collection.

Q. I asked you if any of those notes were protested. Perhaps I ought to have said were those notes not paid in that interval of time? A. Yes. Those notes Mr. Campbell allowed to go unpaid, and, at that time, the $4000 was in the hands of Mr. Cull, and we had presented to Mr. Campbell a great many orders on that fund to take care of these notes, but he declined to sign any of them, the effect being to discredit and damage the whole enterprise, as well as Mr. Redman and myself individually.

Mr. RIDOUT: So much of the testimony as undertakes to go into the question of damages for non-payment of notes, is objected to as not appropriate to any issues in this case.

Mr. SIDDONS: I offer them in evidence.

(And the same are filed by the Examiner, marked Complainants' Exhibits Nos. from 17 to 39, both inclusive.)

Q. Mr. Daniel, were there any of these notes given by the parties to this litigation for this enterprise protested, or allowed to go unpaid, after Mr. Campbell agreed to the release or use of the $4000 deposited with Mr. Cull for the payment of the building operation obligations?

Mr. RIDOUT: Same objection as to the materiality of the question of the protest or not of the notes.

A. I think there have been a good many other than those mentioned in this particular lot.

Q. I hand you these notes, Mr. Daniel, and ask you to state if any of them are notes that were either protested or remained unpaid after that period of time? (Handing witness notes.) A. Yes, sir, some of these, but not all of them.

Q. Can you pick out those that were? A. Any of these subsequent to the date of February 15, 1904.

Mr. SIDDONS: Counsel for complainants, with respect to the last notes handed to the witness, will select those that remain unpaid and protested after the date specified by the witness and offer them in evidence, first submitting them, of course, to counsel for the defendant.

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Q. You said the other night Mr. Daniel, that Mr. Campbell had not delivered any vouchers to you in support of this statement of account that he left with you. Do you know whether, in fact, he at any time did submit vouchers to you, or to any of the parties in the cause, or your counsel? A. Yes, after the Malnati sale was closed, I think about January 14th or 15th, I met Mr. Campbell for a conference in Ralston and Siddons' office. Mr. Siddons and Mr. Campbell and myself being present. Mr. Campbell was asked whether he had the vouchers that he had promised to deliver. He stated that he had a few in his pocket and handed them out to Mr. Siddons. He was then asked had he arrived at the cost of the houses in this building enterprise. He stated that his attorney had told him not to say what the houses cost, and that Daniel and Redman wanted to know merely as a matter of curiosity; it was not any of their business, anyhow.

Q. Well, now, besides those papers that you refer, — Mr. Daniel, as submitted by Mr. Campbell at that time, do you know whether he submitted subsequently any more? A. Yes, he submitted all he said that he could get, and they were handed to me by Messrs. Ralston and Siddons to look over.

Q. Now, where are those vouchers now, Mr. Daniel? A. They were returned to Mr. Campbell, but, as I understood at the time, Messrs. Ralston and Siddons had a memorandum made of them before they gave them back to Mr. Campbell.

Mr. SIDDONS: Well, Mr. Ridout, I think, as far as I can see at the present time, that closes my direct examination of Mr. Daniel.

Cross-examination.

By Mr. RIDOUT:

Q. Mr. Daniel, you practically organized and created the Northwest Eckington Improvement Company, did you not? A. Yes, in 1891.

Q. And you continued from that time down to the present to be the active and controlling spirit in the management of the enterprise, have you not?

Mr. SIDDONS: So much of the question as relates to a period antecedent to the contract, or alleged contract relation of the parties, is objected to. It is not responsive to the direct examination, and not an issue in this cause.

A. At first I was not, but, after the first two or three years, I bought out other interests, and, naturally, Mr. Redman and myself had a controlling interest in the stock of the company.

Q. How much stock do you own?

Mr. SIDDONS: I object. The question is not material. It is alleged in the bill that Mr. Daniel and Mr. Redman, between them, held a majority of the stock, and the fact is admitted by the answer
37 to be true. The individual holdings of the gentlemen have no bearing in this case, and I think I ought to instruct the witness that he is not obliged to answer, unless he wishes to do so.

The WITNESS: I have no idea of answering the question, for it is absolutely irrelevant.

Mr. RIDOUT: I reckon we will have to take the opinion of the court, Mr. Siddons, and I ask the Examiner to certify the question.

Mr. SIDDONS: If Mr. Daniel wishes to answer it he can, but I think that I am obliged to instruct him, in my view of the case, that he is not obliged to answer the question. It simply tends to disclose a matter that is personal to himself and not an issue in the controversy.

NOTE BY THE EXAMINER.—Agreeably to the request of counsel, the Examiner certifies to the court for its action thereon the question asked the witness on page 48 of the record, to which objection was made and certification requested.

J. ARTHUR LYNHAM, *Examiner.*

October 20, 1904.

WEDNESDAY, *October* 26, 1904—7:30 o'clock p. m.

Met, pursuant to agreement, to resume the taking of testimony on the part of the complainants.

Present: Frederick L. Siddons, Esq., of Solicitors for the complainants, and John Ridout, Esq., Solicitor for the defendant.

Whereupon T. CUSHING DANIEL, having been heretofore duly sworn, was recalled and further interrogated.

Direct examination.

By Mr. SIDDONS:

Q. Mr. Daniel, at the last session I asked you to produce the checks representing advances that you had testified you made Mr. Campbell during this building enterprise, and you referred to one, an advance of $600, a check, which you stated you had not been able to find. Have you found it? A. Yes, sir.

Q. Is that it? (Handing witness check.) A. (After examining same.) Yes, sir, that is the check.

Mr. SIDDONS: That goes in evidence.

(And the same is filed by the Examiner, marked Complainants' Exhibit 40.)

NOTE.—It is hereby stipulated between counsel for the complainants and defendant that Exhibit 2, filed with the bill of complaint, may be introduced in evidence as a true and correct copy of the original letter addressed to Mr. Cull, and its acceptance by Mr. Campbell.

By Mr. SIDDONS:

Q. Now, Mr. Daniel, between the date of the deposit with Mr. Cull of the $4000 mentioned in the letter to him just referred to, and the date when Mr. Campbell finally agreed that money
38 should be utilized in paying claims due for material, and other things in and about this building enterprise, were any requests made of Mr. Campbell that he would consent to such a disposition of them, or any orders given upon the fund in favor of material men and others? A. Yes, sir, the Northwest Eckington Improvement Company, Daniel and Redman, made off orders to a good many of the material men and delivered the orders to them to be signed by Mr. Campbell, and he declined to sign any of those orders, or to consent to the use of that money in Mr. Cull's hands for fully thirty days.

Q. Mr. Daniel, did Mr. Campbell receive any portion of the proceeds of the Malnati sale under that letter to Mr. Cull? A. Yes, sir, he received $1,600.

Cross-examination.

By Mr. RIDOUT:

Q. Mr. Daniel, are you positive that your first interview with Mr. Campbell concerning the property in question was in New York, in the fall of 1901? A. Yes, sir, it was in the winter of 1901, or a month probably after the first of January. The conversation occurred at our boarding house in Brooklyn, on the corner of Henry and Pierpont streets.

Q. At that time what was the incumbrance on the property—the purchase money incumbrance? A. A little over $32000.

Q. How was it as to being overdue? A. Well, the original trust was given in 1892, and was payable on or before one, two and three years, and it had been allowed simply to remain, and interest being paid on it up to the time, and after the time when this interview occurred.

Q. Was interest overdue at that time? A. I think it is very doubtful whether there was any interest overdue at that time at all.

Q. What is your recollection about it? A. My recollection is that I had received several communications from the trust company that held these notes for Mrs. Franz, and that there were a good many payments that I had made on the principal to Mr. Franz during his life that had not been credited on any statement that I had received from them at that time.

Q. Is it not a fact that the trust company, representing Mrs. Franz, was at that time pressing very vigorously for the payment of that note? A. They were, under a misapprehension that there was interest due on it.

Q. And is it not also a fact that you had found it difficult to make provision to meet the demands of the Franz estate?

Mr. SIDDONS: I want to interpose an objection. The question is objected to on the ground that it is not responsive—the examination is not responsive to the examination in chief, nor material to

the issues between the parties—relevant or material to the issues between the parties.

A. No. At that time there was not as much inconvenience as there had been in carrying that property through 6, 7 or eight years of the depression that followed the panic of 1893.

39 Q. Is it not a fact that the trust company required, as a condition of further extension of that incumbrance, that it should be additionally secured?

Mr. SIDDONS: Same objection, and, in order not to waste time, let it be understood that my objection goes to the whole inquiry.

Mr. RIDOUT: Yes.

A. No, sir.

Q. Did not the trust company require some further guarantee or endorsement to the paper? A. The trust company never required anything of the kind. They only wrote letters when they were requested to do so by Mrs. Franz. She always stated that she did not want any additional security; that the ground itself was all the security she wanted for her money.

Q. Did not Mr. Campbell, either alone, or in conjunction with yourself and Mr. Redman, sign a paper guaranteeing the payment of the incumbrance on that property?

Mr. SIDDONS: I object to the inquries as to the contents of a paper—as calling for the substance of a written paper, and, of course, the question is objectionable for the additional grounds mentioned before in my first objection to this line of testimony.

A. No, sir. As a part of Mr. Campbell's undertaking under his contract, a part of which was to pay off the $32,500 trust, I required him to sign that paper.

Q. Then, that paper was signed at your instance and not at that of the trust company's? A. That is my recollection of it. It is a part of the contract that we made with Mr. Campbell, that he was to sign such a paper.

Q. And was not suggested by the trust company? A. The trust company made no suggestion on the subject at all.

Q. You are sure of that? A. Yes, sir.

Q. And Mrs. Franz did not require anything of the sort? A. Mrs. Franz told me positively that she did not want any more security than the land.

Q. You are speaking now of the 1901—the time when this contract was first discussed, as I understand? A. No, sir, I am relating to the last contract, when it was signed, October 23, 1902. That is the date of that contract, as I remember it.

Q. That is not the first contract? A. That is the one I am speaking of now in regard to this transaction that we are now discussing. It was all in regard to that contract mainly. The other might have had something to do with it.

Q. You stated in your examination that there was some eighty or ninety building lots, containing 1800 feet on the average. Assuming that to be the correct number of lots, how do you account

for your testimony, on page 2, of the record, that there were 430 to 440 thousand feet still unsold? A. I was speaking then of the map of a South portion that was filed in this testimony, and separately stated that there was a piece on the North side of
40 Rhode Island — that, of course, made it more. I think, in all, there is about 115 or 120 lots in it.

Q. What do you say that property was worth on the average as a whole per foot at the time when the contract dated October 23, 1902, was made? A. Well, the land was worth twenty-five per cent. more than we had been selling lots in the property for during 1895 and 1896, none of which brought less than thirty cents a foot.

Q. You mean to say that that applied to all the lots, or simply to the choice lots? A. No, that was about an average. Some of them brought more than that when sold.

Q. What do you say the land up there near the Chase property is worth? A. Well, I sold Mr. Trotter a lot up there for——

Q. That is not answering my question, Mr. Daniel. The question is what the property was worth at that point at the time when this contract was executed? A. If you mean the North side of Rhode Island Avenue——

Q. I mean just abutting the Chase property? A. Well, it was worth thirty-five or forty cents a foot at that time.

Q. And that was so in 1902, at the date of the execution of this contract? A. Yes, sir.

Q. And the choice lots were worth more, is that your testimony? A. Forty cents. I say thirty-five cents, and the choice ones forty cents on the North side of Rhole Island Avenue.

Q. Is it not a fact that the reason you sought Mr. Campbell's intervention in this matter was because of the financial pressure upon those interested in the Northwest Eckington Improvement Company at that time in connection with this property? A. Mr. Campbell made an investigation in regard to this real estate improvement, and I think he came to us more than we went to him. He knew that there was a great deal of money to be made in the property, and suggested the plan by which it could be done.

Q. In the fall of 1902 had the present railroad situation in the vicinity of Northwest Eckington been decided upon? A. Yes, sir, the bills had passed Congress, and it was a fixed fact that the Baltimore and Ohio Railroad Company was going to make these improvements out there.

Q. The bill providing for the present situation in the vicinity of Northwest Eckington had then passed Congress, is that your recollection? A. Yes, sir, the first bill, of course. There was another one, you know, that passed a little later.

Q. You are positive of that? A. Yes.

Q. On page 3 of your testimony you state that in New York, in the fall of 1901, you remarked to Mr. Campbell that you owned a valuable piece of property and thought there would be a good deal of money in it. In the light of that statement, do you still insist that Mr. Campbell approached you on the subject, instead of your

approaching him? A. He did so, after getting back to Washington and looking into the situation. That was the following spring.

Q. You brought it to his attention, did you not—you first brought it to Campbell's attention? A. I discussed the value of the property with Mr. Campbell, as I stated, in Brooklyn.

41 Q. And you introduced the subject? A. I can't tell who first brought it up. It is too long ago.

Q. You remembered when you first testified the other day? A. I think it most likely that I did.

Q. What was the value of this property in 1901, at the time when you first spoke of it to Mr. Campbell?

Mr. SIDDONS: Now, I object to that question as irrelevant and immaterial.

A. I always considered the lots in that property worth over thirty cents a foot for the last nine years.

Q. Now, was the situation in 1901, at the time of this conversation in New York, any more urgent in respect of that Franz trust than it was in 1902, when the contract was signed?

Mr. SIDDONS: Objected to because the question assumes that there was some urgency about the Franz trust, which is not in evidence.

A. I do not admit that there was any particular urgency during the time mentioned in New York, but I will state that I investigated the account at the National Safe Deposit and Security Company in 1902, and I found out that they had not credited the Northwest Eckington Company with a good deal of money that had been paid in. At that time we did not owe them any interest. As a matter of fact, they returned me some money that we had overpaid them.

Q. Is it a fact that from 1901, at the time of this first conversation with Mr. Campbell on the subject of this property, down to the time of the execution of the contract dated October 23, 1902, and at the time of the execution of the deed to Campbell, there was no urgency at all on the part of the holder of that incumbrance for its payment? A. The trust company, under a misapprehension, had written us a good many letters by the request of Mrs. Franz, who thought that there was interest due on the trust, which later, when the account was ascertained by me from the treasurer of the company, Mr. Howard, there was no interest due Mrs. Franz. Consequently the letters must have been written under a misapprehension.

Q. Mr. Daniel, on page 13 of your testimony, you state that application for the first building loan was made by yourself and Mr. Redman and Mr. Campbell because it was difficult for a corporation to borrow money. How was it in anywise a loan to the corporation which was sought in the matter of those five houses?

Mr. SIDDONS: The question is objected to, because that is not what the witness testified.

A. Well, the first idea of Mr. Campbell was to build up the whole of the property for the Northwest Eckington Improvement Company, but when he was discussing the question of borrowing money he suggested the difficulty of a corporation negotiating such building

loans, and then decided to have the company deed lots to himself Redman and myself, and, in that way, borrow the money jointly on the lots that could be released from time to time, and to work
42 that plan until the whole trust—the whole original trust was paid off by the segregation of tiers of lots, as they were built up.

Q. At the time of the application for the first building loan, had the property been conveyed to these three gentlemen? A. If it had not been all of the arrangements had been made to do it. I cannot recall now exactly all of the relative dates.

Q. Mr. Daniel, was not a large part, if not the whole, of the first payment under the first building loan, applied to the payment to Mrs. Franz, in order to obtain a release of the five lots from the blanket deed of trust? A. As well as I remember, something between $2000 and $3000 was paid for the purpose of releasing these first five lots were deed- to Campbell, Redman and myself.

Q. What was the amount of the first payment under the building loan, if you remember? A. I think it was $3000, as well as I remember.

Q. Did not the necessity for thus depleting the building loan for purposes of paying off the incumbrance produce a deficiency in the available funds for building operations from the start, thus necessitating raising money on time notes, and giving notes to material men? A. I think that was practically covered by the money that Mr. Campbell had already in hand from a note that I endorsed for him around at the Citizens' National Bank.

Q. Was that the note dated March 23, 1902. A. Yes, sir.

Q. Out of the second building loan, how much was paid to Mrs. Franz on account of her deed of trust? A. Between $2000 and $2500, as I remember.

Q. Mr. Daniel, I hand you five checks of C. M. Campbell, dated November 12, 1903, for $250; December 5, 1903, for $107.95; December 23, 1903, for $100; May 25, 1903, for $150; and May 25, 1903, for $300, and ask you to state whether the endorsement, "T. C. Daniel," or "T. Cushing Daniel," as the case may be on the back of those checks is your signature? (Handing witness checks.) A. (After examining same.) Yes.

Mr. RIDOUT: Now, I will ask the Examiner to mark them for identification and give them back to me.

(And the same are marked by the Examiner "For identification J. A. L. Nos. from 1 to 5, both inclusive, agreeably to the request of counsel.)

By Mr. RIDOUT:

Q. Mr. Daniel, you have testified, commencing on page 41, that from time to time you gave Mr. Campbell a good many checks at his request. Were you not repaid by him the amount of those checks? A. No, sir.

Q. None of them? A. Why he no doubt returned some of them, but none that I have entered in this, so far as I know, in this state-

ment. I have other checks that Mr. Campbell collected the money on that I have not turned in here at all.

Q. But your present statement, I understand—is it a fact that you have never been repaid any amounts representing advances made through the eight checks which you have offered in evidence
43 here? A. There may have been one or two by simple mistake, for the reason that I had to collect these out of a total number that I had given Mr. Campbell, and it is barely possible that I might have substituted one or two of them. But I will, since getting Mr. Campbell's checks, I will compare them with those that I still have in my possession, and show definitely the exact checks that he has not repaid.

Q. Do the eight checks which you have offered in evidence represent the aggregate which you advanced to Mr. Campbell, on account of which you have never received any payment? A. In order that there may be no confusion, since Mr. Campbell has at last furnished some more data for us to check up on, I will have a bookkeeper, who examined his accounts, to verify this check account, and give you the correct data.

Q. Then, you are not certain, now, that the eight checks represent money not refunded to you? A. I think I have checks in my possession signed by Mr. Campbell, and the money collected by him, that account for all the checks that he claims to have returned the amounts to me.

Q. Please give me a definite answer, Mr. Daniel. I wish to have from your recollection the definite statement whether you claim that the aggregate of those eight checks represent a sum never repaid to you? A. Yes, sir, that is my recollection.

Q. You spoke of a $600 note which was discounted, on page 44 of your testimony, and you say that you took the note up and afterwards sued Mr. Campbell, and that he has paid $350. What was the date of the institution of that suit? A. I will have to refer to our attorneys, who had that case in hand.

Q. You brought a suit, did you? A. No, I think he paid the $350 after the papers were all drawn up and ready to file.

Q. And do you say that he still owes $100 on account of that matter? A. Yes, sir.

Q. Is it not a fact that you were indebted to Mr. Campbell to an amount which you admitted to be at least equal to $100, and that you allowed him credit on your claim for $450 for that sum? A. No, sir, and I propose, unless he pays that $100, to sue him for it in a very short time.

Q. Mr. Daniel, when notes were given in payment for material, and were afterwards paid by Mr. Campbell, he was entitled to credit for such payment, was he not? A. I don't think there is any question about that, although I knew very little as to when Mr. Campbell paid any of these notes. He never gave me any information to go upon as to whether he paid them or not. They were absolutely under his control and attention.

Q. What has been the experience in respect to the ability to rent the ten houses that have been built out on part of this property?

A. It has been a very satisfactory revenue producing building operation.

Q. Do you think that the experience of those ten houses indicate that the demand there would have been sufficient to justify the erection of others? A. Yes, sir, there have been some others
44 erected within two squares of these, and they have been all rented. I think you could rent any number of them as fast as you could put them up. Some of them were idle a little——

Mr. RIDOUT: Well, you have answered the question, Mr. Daniel, you need not comment on it.

The WITNESS: Very well.

Redirect examination.

By Mr. SIDDONS:

Q. Mr. Daniel, isn't it a fact that the revenue from these houses has already reduced the first loan—the first building loan that was obtained by some $900? A. Yes, sir, as I remember it is over $1000.

Q. Has the revenue of these houses paid all fixed charges on them, such as taxes, interest on the loan, and so on? A. Yes, sir.

Q. Mr. Daniel, do you recall when it was that the actual operation of excavating and building for the first five houses commenced? A. As I recall it, it was in December, 1902.

Q. Can you tell me, approximately, about what time in the month, that is to say was it in the beginning or the middle or the end? A. The excavating commenced, I think, in the latter part of November.

Q. Assume, Mr. Daniel, that the second payment on account of this first building loan was made on December 26, 1902, to Mr. Compbell. Can you tell what stage of construction those first houses had reached at that time—do you know? A. Yes. The weather was pretty bad, and, as I remember it at that time, very little headway had been made with them up to that second payment.

Q. Could you tell me whether or not the excavations for foundations had been completed by December 26th, 1902? A. They were at work on them, but I can't state positively whether they were completed or not.

Q. Can you state whether or not any brick had been placed in the foundations? A. I am under the impression they had not started the brick work at that time.

Q. Are you able to state, Mr. Daniel, that on December 26, 1902, there was any more than the first floor joists laid on this building enterprise of the first five houses? A. To the best of my recollection, I think not.

Q. Assuming that the first floor joists had been laid on these five houses, is your knowledge sufficient of the obligations to laborers and material men to that point—were the obligations to them exceeding the sum of $3000 or not. A. I should say not more than $1000 was due on their work up to that time.

Q. Then, the fact that the whole of the first payment on account of this loan, if it is a fact that the whole of it was absorbed in a pay-

ment on account of the underlying mortgage or deed of trust held by Mr. Franz, it would not have embarrassed Mr. Campbell in paying out money on account of the operations at that point, that is, as of December 26, 1902? A. None at all.

Q. Between the period of the payment on account of this loan—of the first payment—and December 26, when the second payment was made, are you able to state whether or not there would have been anything more than some labor bills to pay for digging foundations and so on? A. That is about all that would have been due.

Q. Mr. Daniel, in your examination in chief, you stated that the first conversation you had with Mr. Campbell about this project, or about this property, was in the fall of 1901. You stated on cross-examination tonight that it was about January, 1902. Now, which is correct? A. I mean that it was in the latter part of the year, 1901, and it may have lapsed over into the next month after that.

Q. You mean your conversation might have lapsed over? A. No, the date. It ran just simply up to that point in January, you know, when it was passing the year, preceding the March contract.

Q. You mean to say, then, that, to the best of your recollection, the latter part of 1901 or the early part of 1902? A. That's right.

Q. Can you state, approximately, how long it was before the contract of March 13, 1902 was made—what has been known as the Sanitary Dwellings Contract? A. Well, it was after we had returned to Washington from New York. The conversation occurred at about, well I suppose a month previous that led up to that contract.

Q. You misunderstood my question. I asked you if you could state how long before the contract of March 13, 1902, was made it was that you had this conversation in New York with Mr. Campbell? A. It was the January preceding the March contract.

Q. Mr. Daniel, Mr. Ridout has asked you about some agreement to which Mr. Campbell became a party in connection with the Franz deed of trust. Was that contract in writing? A. Yes, sir.

Q. Do you recall about when it was made? A. Well, the contract will speak for itself. It was about the time that we entered into the last contract with Mr. Campbell to build up this property, and a short time after that contract, as I remember it.

Q. Do you know where that contract is? A. Yes, sir, I left a copy here at your office.

Q. No, I am not talking about the copy; I am talking about the original. A. The original is with the National Safe Deposit Savings and Trust Company.

Q. Can you tell when that contract was made and executed? A. They gave me a duplicate.

Q. They gave you a duplicate of the contract? A. They gave me a duplicate and I left it here in the papers.

Q. Who gave you a duplicate? A. Mr. Hoover, the trust officer of the company.

Q. The contract was not executed in duplicate, was it? A. Well,

I don't remember. I only know that this duplicate was furnished at the time.

Q. At the time that the contract was executed, had you any contract, or had the Northwest Eckington Improvement Company any contract with Mrs. Franz, whereby she was bound to release
46 from her deed of trust separate portions of the tract covered by it? A. Yes, sir.

Q. You had such a contract at that time with her? A. Yes, sir, that is signed by Mr. Jacob Franz, her husband, and subsequently acquiesced in, and lots released under it by Mrs. Franz and the trust company.

Q. Mr. Daniel, can you tell me at what period or times of the year the interest under the Franz deed of trust matures? A. I can't recall it now.

Q. You don't know what month of the year it is? A. No.

Q. I will ask you to look at that paper, Mr. Daniel, and tell me if that is the contract which I have been asking you about, the contract to which Mr. Campbell is a party? (Handing witness contract.) A. (After examining same. Yes, sir, that is the agreement.

Mr. SIDDONS: Then I will offer this in evidence, as a true and correct copy of the original contract, and it is accepted as such proof of the evidence of that contract, and request that the same be copied into the record.

(Agreeably to the request of counsel, the contract is here copied into the record, as follows:)

Memorandum of agreement, made and entered into this second day of December, A. D. 1902, by and between T. Cushing Daniel, Charles M. Campbell and Samuel C. Redman, all of the City of Washington, District of Columbia, parties hereto of the first part, and Eleanora T. Franz, of the town of Brightwood, in said District, party hereto of the second part.

Whereas, the party hereto of the second part is the holder and owner of three certain promissory notes in the sum of twelve thousand five hundred dollars ($12500) each, signed by said T. Cushing Daniel, by the name of "T. C. Daniel," dated July 28, 1891, and secured by deed of trust upon lot 35 in "Metropolis View" in said District, on which said promissory notes there is now due in principal and interest the sum of $32,938.66.

And whereas, said Elenora T. Franz has agreed, and by her signature and seal to these presents does agree, upon certain conditions hereinafter set forth, to release from the operation of said deed of trust a certain portion of real estate thereby conveyed, to wit, a part or parcel of said lot 35 fronting 100 feet on North side of Rhode Island Avenue, as now extended through said lot and running back in parallel lines 90 feet; the parcel so to be released to be selected by the said T. Cushing Daniel, provided, however, that the selection made by said Daniel shall comprise one parcel and shall embrace no greater area than the land above specified.

In consideration of such release by the party hereto of the second part, the parties hereto of the first part, for themselves, and for

their respective heirs, executors, administrators and assigns, covenant and agree to and with the said Elenora T. Franz as follows:

1st. That they will pay, or cause to be paid, to her or to
47 such person or corporation as she shall designate to receive the same, the sum of twenty-five cents per square foot for the land so to be released, the sum so paid to be thereupon credited upon the above mentioned notes of T. C. Daniel, which are now held by the National Safe Deposit Savings and Trust Company of the District of Columbia for collection.

2nd. That they will, within the period of six months from the date of this agreement, erect, or cause to be erected and completed ready for occupancy, five substantial brick houses or dwellings upon the land so released, such houses or dwellings to cost not less than the sum of three thousand dollars ($3000) each.

3d. That they will pay, or cause to be paid, at the time of the execution of the hereinbefore mentioned deed of release, all taxes and assessments, general and special, upon so much of said lot 35 in "Metropolis View" not heretofore sold and conveyed by the Northwest Eckington Improvement Company by deeds recorded in the office of the Recorder of Deeds for said District, and in evidence of such payment or payments will exhibit to the said party hereto of the second part, or to such person or corporation as may be designated by her to inspect the same, the receipted bill or bills for all such unpaid taxes or assessments.

In further consideration of the hereinbefore mentioned agreement to release the said parties hereto of the first part, for themselves and for their respective heirs, executors, administrators and assigns, hereby guarantee unto the said party hereto of the second part that the amount remaining due upon said promissory notes, after the credit thereon of the amount paid for the release hereinbefore mentioned, together with all interest thereon, when and as the same shall respectively become due and payable, shall be promptly paid, and hereby covenant and agree to save harmless and protect the party hereto of the second part from and against any and all losses which she may sustain by reason of the failure of said T. C. Daniel to make the payments hereby guaranteed; and by these presents waive demand of such payments and notice to them of the failure by said Daniel to make such payments when due.

It is hereby mutually stipulated and agreed that each of said notes shall at the time of the payment hereinbefore mentioned have endorsed thereon "the time of payment of this notice is extended to December 12, 1904, or before, with interest payable semi-annually at six per cent. per annum. Said note, and the deed of trust securing the same are to remain otherwise unqualified and in full force."

It is hereby understood and agreed that nothing contained in these presents shall in any manner affect the validity of the deed of trust hereinbefore mentioned as a first, subsisting and continuing lien upon the land described in said deed of trust other than the part heretofore released, or to be released, as agreed upon in and by these presents.

In testimony whereof, the parties hereto of the first and
48 second parts have hereunto set their hands and fixed their seals this second day of December, A. D., 1902.

T. CUSHING DANIEL. [SEAL.]
CHARLES M. CAMPBELL. [SEAL.]
SAMUEL C. REDMAN. [SEAL.]
ELENORA T. FRANZ. [SEAL.]

Witness:

——— ———.

By Mr. SIDDONS:

Q. Did I understand you to say Mr. Daniel, that you cannot recall the month of the year when the Franz interest comes due—falls due? A. I cannot just at present.

Mr. SIDDONS: I think, barring the matter of the interest periods, Mr. Ridout, I am through with Mr. Daniel.

Mr. RIDOUT: Well, I think I am. Of course, after I read the testimony over, and if he is here, I will do as you did.

Mr. SIDDONS: Of course, we are not going to hold ourselves down to technical considerations.

T. CUSHING DANIEL.

Subscribed before me this 10th day of January, 1905.

J. ARTHUR LYNHAM,
Examiner.

(At this point an adjournment was taken until Friday, October 28th, 1904, at 7:30 o'clock p. m.)

FRIDAY, *October 28th*, 1904—7:30 o'clock p. m.

Met, pursuant to adjournment, to resume the taking of testimony on the part of the complainants.

Present: Frederick L. Siddons, Esq., of Solicitors for the complainants, and John Ridout, Esq., Solicitor for the defendant.

Whereupon T. CUSHING DANIEL, having been heretofore duly sworn, resumed the stand and was further interrogated.

Direct examination.

By Mr. SIDDONS:

Q. Mr. Daniel, when the contract between Mr. Campbell, Mr. Redman, Mrs. Franz and yourself was made, that you were talking about the other evening when we closed, was there any interest due on the Franz trust at that time?

Mr. RIDOUT: Objected to as having been fully inquired of at the previous examination of the witness.

A. No, sir. I went over the account with Mr. Howard, the treasurer of the National Safe Deposit Company, and he found out that he had not given the Northwest Eckington Improvement Company

credit for a good deal of money that had been paid to Mrs.
49 Franz for the release of lots, the result being that he afterwards sent me a check for over $200, and some first trust notes that he had in hand.

Q. Mr. Daniel, did Mr. Campbell pay any interest under this contract at the time it was signed and executed? A. No, sir.

Q. Did he ever, out of his own pocket, pay any interest on that deed of trust, or any part of the principal? A. Not one dollar.

Q. After the execution of the contract with Mrs. Franz, did any interest on the Franz trust accrue which was not paid? A. Yes, sir, about $1800 interest was accumulated after that contract was signed by the parties to it.

Q. When did you find that out? A. I cannot remember the date, but I received a letter from Mr. Hoover, the trust officer of the company, notifying me——

Q. Well, you cannot give the contents of that letter, unless you have the letter. A. I have a copy of the letter in the papers here.

Q. Do you think you could find the original of that letter? A. I think I could.

Q. I shall ask you to produce it, then. Can you give me any idea about when it was? A. Well, it was, I should imagine,—in fact I can't recall the date.

Q. Well, can you tell me when this overdue interest—this $1800 of overdue interest on the Franz trust was paid? A. Yes, sir, that was paid out of the money we received from the sale of the property of the Northwest Eckington Improvement Company to Malnati. That was about the 8th of January.

Q. The 8th of January of what year? A. 1904.

Q. Can you state, Mr. Daniel, in round numbers, the amount of obligations on which you became liable at Mr. Campbell's request for the building enterprise?

Mr. RIDOUT: Objected to, because the identical question practically has been asked and answered heretofore by the witness.

A. At the time Mr. Campbell rendered his statement of December 31st, or the 1st of January, I found that the Northwest Eckington Improvement Company, Mr. Redman and myself, with Mr. Campbell, were obligated for about $15,000 on the building enterprise in Eckington in charge of Mr. Campbell.

Q. Did Mr. Campbell pay any of that? A. Mr. Campbell has never paid a dollar of it out of his own funds. He has paid about $900 out of the $1600 that he got from the Malnati sale of the company's property.

Q. On account of curtails? A. On account of curtails. I would state, of course, this does not refer to the 25,000 loan on the buildings themselves.

Q. What do you mean? A. These obligations were above that, you know.

Mr. SIDDONS: That is all.

Mr. RIDOUT: No cross-examination.

T. CUSHING DANIEL.

50 Subscribed before me this 10th day of January, A. D. 1905.
J. ARTHUR LYNHAM,
Examiner.

Thereupon SAMUEL C. REDMAN, produced as a witness on the part of the complainants, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. SIDDONS:

Q. Mr. Redman, you may state your full name and your residence and occupation? A. Samuel Clarence Redman; manufacturer; residence, Washington, D. C.

By Mr. RIDOUT:

Q. What is that paper you have in your hand, Mr. Redman? A. That is a few notes that will guide me.

Mr. RIDOUT: Well, I object.

Mr. SIDDONS (to the witness): You cannot examine notes, Mr. Redman.

By Mr. SIDDONS:

Q. You are one of the complainants in this case, are you not, Mr. Redman? A. Yes, sir.

Q. You know Mr. Campbell, the defendant? A. Yes, sir.

Q. Did you ever call on Mr. Campbell for a statement of account, or an accounting from him for his management of this building enterprise, the subject-matter of this controversy? A. I did, sir.

Q. Can you tell me when that was, or about when, with reference to the building operations themselves—what stage of them? A. I think that, sir, was in December.

Q. December of what year? A. December, 1903.

Q. December, 1903? A. December 28th, if my recollection is correct.

Q. You asked him to render you a statement of account as to the money that he had received and disbursed? A. Yes, sir.

Q. Did Mr. Campbell ever ask you to sign any contract, other than the contracts of March and October, 1902?

Mr. RIDOUT: Objected to, unless *be* be shown that the contract was afterwards executed.

A. On or about December 26th——

Mr. RIDOUT (to the witness): Give us the year always, please, Mr. Redman.

A. (Continuing:) 1903. Mr. Campbell called at my office having a contract which was incomplete, and requested me to sign it. I declined, stating at the time that I would confer with Mr. Daniel and advise him.

Q. Did you do so? A. I did.

51 Q. What answer did you finally give Mr. Campbell? A. I refused to sign it.

Mr. SIDDONS: Mr. Ridout, that is the contract that I asked you to produce here, the contract that is dated about June 19, 1902, I think.

Mr. RIDOUT: I will produce it, Mr. Siddons.

By Mr. SIDDONS:

Q. Mr. Redman, did Mr. Campbell ever endeavor to get you to raise him a thousand dollars during the time these building operations were going on?

Mr. RIDOUT: That question is objected to because, like all of the others of this witness' examination nearly, it is manifestly leading.

A. On or about June 5th, 1903, Mr. Campbell stated that he was temporarily short, and thought it no more than right and fair that Mr. Daniel and I equally raise $1000 for his use in the enterprise, and suggested that I go to the Lincoln National Bank and make said request, as he knew that I was known there. I told him that I would go to the Lincoln National Bank relative to the matter and advise him the next day. I did so, conferring with Mr. Wilson, the President, and Mr. Stier, the Cashier of said bank, explaining to them——

Mr. RIDOUT: Haven't we gone far enough with hearsay?

Mr. SIDDONS (to the witness): You cannot testify as to what was said between you there.

Mr. RIDOUT: You went to the bank and applied for the loan; that is enough.

A. (Continuing:) And it was refused.

Mr. RIDOUT: All of the witness' testimony as to *to* this note is objected to, as it does not appear that it was in anywise effectuated.

A. (Continuing:) The next day I conferred with Mr. Campbell on the subject, and the matter was dropped.

By Mr. SIDDONS:

Q. Did Mr. Campbell ever apply to you to secure another discount?

A. On December 28th, 1903, Mr. Campbell met me in Mr. Daniel's office, and said that there was to be a curtail made on one of the obligations due at the Citizens Bank, and is was necessary for me to raise the sum of $375 on an accommodation note to the American National Bank. I refused to do so at the time, but he insisted that I talk with Mr. Daniel about it. At the time Mr. Daniel was not in his office. I called him up over the 'phone and talked with him about it, and finally decided to grant his request, and thereupon went to said bank and got the cash and handed it to Mr. Campbell.

Q. How did you get the cash?

Mr. RIDOUT: Objected to as immaterial.

A. By having the note discounted.

Q. Was Mr. Campbell on that note? A. Yes, sir.

Q. Who paid it when it became due? A. The note, by the way, was given for sixty days. On maturity Mr. Campbell refused to pay it, and, rather than be embarrassed, I personally took it up and afterwards sued Mr. Campbell.

52

Q. Did he pay it then? A. Yes, sir.

Q. You stated, Mr. Redman, that it was in December, 1903, that you asked Mr. Campbell for a statement of account or for an accounting. Was that the only time that you ever asked him, or did you ask him only once? A. No, sir, I can't recall the dates, but he was undoubtedly asked many times prior to that time.

Q. By you? A. Yes, sir, but this especial date was in reference to vouchers which I insisted on, that it was necessary to report intelligently upon his work.

Cross-examination.

By Mr. RIDOUT:

Q. Why did you expect Mr. Campbell to pay that note in full? A. Because it was a personal matter.

Q. You have just testified that it was in connection—— A. (Interposing.) At that time it was a personal matter between Mr. Campbell and myself.

Q. But the proceeds, as you knew, went into the building enterprise, did they not?

Mr. SIDDONS: I object to that question. That is not the testimony of the witness at all.

Mr. RIDOUT: It is cross-examination.

Mr. SIDDONS: He only knows what Mr. Campbell told him.

A. I don't know what Mr. Campbell did with the money positively.

By Mr. RIDOUT:

Q. Do you contend that Mr. Campbell was obliged to advance all the money for the building of those houses not furnished by the building loan?

Mr. SIDDONS: The question is objected to as not responsive to the examination in chief, and calling for the witness' contention in the matter.

A. I considered it so, according to his contract.

Redirect examination.

By Mr. SIDDONS:

Q. One more question, Mr. Redman. When Mr. Campbell came to you to make this $375 discount or advance, which you have spoken about, I wish you would tell me as nearly as you can remember, what he said to you at the time?

Mr. RIDOUT: The question is objected to, because the witness has fully testified about this on his examination in chief.

A. I first refused to grant his request, and then it was that
53 Mr. Campbell, very angrily, made the remark that if something was not done at once he would throw the whole thing in the hands of a receiver.

SAMUEL C. REDMAN.

Subscribed before me this 26th day of June, 1904.
J. ARTHUR LYNHAM, *Examiner.*

Thereupon SELDEN BROOKE DANIEL, produced as a witness on the part of the complainants, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. SIDDONS:

Q. Mr. Daniel, you are a brother of the complainant, T. Cushing Daniel, are you not? A. Yes, sir.
Q. What is your business? A. I am assisting my brother, now, in the real estate business.
Q. What is your trade or profession or occupation? A. I have been a merchant.
Q. Are you acquainted at all with book-keeping? A. Yes, sir.
Q. Accounting? A. Yes, sir.
Q. Have you ever done anything of the kind? A. Yes, sir, for years. I was a book-keeper for ten years.
Q. Mr. Daniel, have you ever seen that statement? (Handing witness Complainants' Exhibit 7.) A. Yes, sir, I am familiar with that.
Q. Have you made any examination of that account, Mr. Daniel, with a view to ascertain its correctness? A. Yes, sir.
Q. Did you examine any other papers in connection with it submitted to you? A. Yes, sir.
Q. What papers were they? A. Well, we examined all the accounts in the way of vouchers that were furnished by Mr. Campbell.
Q. Now, as a result of your examination and analysis of that statement of account of Mr. Campbell's what have you to say about its completeness and accuracy?

Mr. RIDOUT: Objected to, as the statement speaks for itself.

A. I would say that it is entirely incomplete.
Q. Did you prepare any statement made up from that view? A. I did.
Q. Is this the statement? A. Yes, sir.
Q. Now, Mr. Daniel, can you tell me, from the examination that you made of that statement, and with reference to your analysis there, to what extent the expenditures—the alleged expenditures appearing on that statement were unsupported by any vouchers? A. I find——

Mr. RIDOUT: I object to the witness using that paper as a basis of his testimony. If he has an independent recollection on the subject it may, perhaps, be competent.

54 The WITNESS: This is my work. I certainly could not give from memory the entries that I found to be unsupported.
Q. Well, now, can you by looking at that statement that you prepared from that account, and thus so refreshing your recollection,

state what items, if any, in this statement were unsupported by vouchers?

Mr. RIDOUT: The question is objected to, because it is immaterial to this controversy, inasmuch as it has already appeared that the vouchers were afterwards furnished.

A. Yes, sir.

Q. I wish you would do so. You need not give them *seriatim*. I will offer them in evidence afterwards. A. Well, I find entries to the amount of $6,526.41.

Q. For which there were no vouchers? A. No vouchers, and no explanation in any sense of the character of the charges.

Q. From your examination of the statement did you find any items charged in twice, or any item charged in twice? A. Yes, sir.

Q. Can you state what it was? A. There is one item of $500 charged in one case to paid on trust, and charged in another case to T. C. Daniel.

Q. Were, so far as you know, Mr. Daniel, complete vouchers, or vouchers for every item charged in there, ever submitted by Mr. Campbell? A. Never.

Mr. SIDDON: (to the witness): I think that is all I will ask you, Mr. Daniel, at this time.

Mr. RIDOUT: No cross-examiantion.

SELDEN BROOKE DANIEL.

Subscribed before me this 10th day of January, 1905.

J. ARTHUR LYNHAM, *Examiner*.

(At this point an adjournment was taken until Wednesday, November 2, 1904, at 7:30 o'clock p, m.)

* * * * * * *

Thereupon T. CUSHING DANIEL, having been heretofore duly sworn, was re-called and further interrogated.

Direct examination.

By Mr. SIDDONS:

Q. Mr. Daniel, on page 58 of the record of the testimony you stated, in response to a question, that you had investigated the state of the Franz trust in 1902, at the National Safe Deposit Company, and that you found out that they had not credited you with money that had been paid in. You further stated that they returned to you some money that you had overpaid them. Do you recall how that was done—how that money was returned? A. Yes. I received a letter sometime in December enclosing me the check and the notes mentioned in the letter.

55 Q. Is that a copy of the letter which you received from them? (Handing witness letter.) A. (After examining same.) Yes, sir.

Q. Where is the original? A. The original is somewhere in my

papers, but I moved my office since it was received, and it would be very difficult for me to lay my hands on it now without a great deal of trouble, if at all.

Mr. SIDDONS: It is understood that counsel for the defendant admits that this is a true copy of the original letter, and does not object to its admission on that ground.

Mr. SIDDONS: Now, I offer it in evidence.

Mr. RIDOUT: Objected to on the ground of immateriality.

(And the same is filed by the Examiner, marked Complainants' Exhibit 43.)

By Mr. SIDDONS:

Q. Mr. Daniel, on page 73 of the record of your testimony, you were asked if after the execution of the contract made between the Improvement Company, yourself, Mr. Campbell and Mrs. Franz, interest on that trust was allowed to get into default, and you said it was, and you were asked then "When did you find that out?" You stated that you could not remember the date, but that you had received a letter from Mr. Hoover, the trust officer of the company, notifying you of it. Now, is that the letter? (Handing witness letter.) A. (After examining same.) Yes, sir, that is the letter.

Mr. SIDDONS: Now, I offer that in evidence.

(And the same is filed by the Examiner, marked Complainants' Exhibit 44.)

Mr. RIDOUT: Objected to as immaterial.

Q. Mr. Daniel, on page 41 of the record of your testimony, answering the questions as to whether you had advanced Mr. Campbell any money in connection with the building operations, you stated that you had, and that you had given him from time to time certain checks, and, among the number, a check for $107. Was that correct?

Mr. RIDOUT: Objected to, because this witness has been on the stand several times, and has had full opportunity to state his case, and further opportunity to change his testimony ought not to be allowed.

A. I, by mistake, put in the check for $107, when it should have been a $100 check.

Q. Is that the $100 check? (Handing witness check.) A. (After examining same.) Yes, sir.

Q. Now, I wish you would look at the back. Whose signature is that? A. That is Mr. Campbell's.

Q. You know his handwriting? A. Yes, sir.

Q. You have seen him write? A. Yes, sir.

Mr. SIDDONS: I offer that check in evidence.

(And the same is filed by the Examiner, marked Complainants' Exhibit 45.)

56 Mr. RIDOUT: Objected to, because the private indebtedness between Mr. Campbell and Mr. Daniel, if such exists, is not the subject of this controversy.

Cross-examination.

By Mr. RIDOUT:

Q. Mr. Daniel, did I understand you to testify that the money represented by the $100 check just offered in evidence has never been repaid to you by Mr. Campbell? A. Mr. Campbell first——

Mr. RIDOUT (to the witness): I want a categorical answer to my question, Mr. Daniel, please. I am entitled to that.

A. (Continuing:) Had a check from me for $107——

Mr. RIDOUT (to the witness): One moment; I object——

The WITNESS: I will give you the facts, if you want them.

Mr. RIDOUT: I object to the witness' answer as argumentative, the question being one which, it must be conceded, any witness can answer yes or no to.

The WITNESS: I will simply state the facts, the only explanation that can enlighten the record on this point. Mr. Campbell had gotten a check from me for $107, which he promised to return the next day. He failed to do so on that day, and a few days afterwards I sent Mr. Burnley up to his house with a check for $100, payable to Mr. Campbell's order, telling him that if he could not return the check for $107 on account of being short in bank, that he could keep the $100 check sent him by Mr. Burnley to meet it with a few days thereafter. It seems he sent the check for $107 and did not return——

Mr. RIDOUT: As Mr. Siddons will undoubtedly agree, you are now stating something that is manifestly hearsay.

The WITNESS: No, sir, it is not hearsay; that he did return the $107 check, but never returned the $100 check which you are asking about.

Mr. RIDOUT: The answer of the witness is argumentative and not responsive to the question.

T. CUSHING DANIEL.

Subscribed before me this 10th day of January, 1905.

J. ARTHUR LYNHAM, *Examiner.*

Mr. SIDDONS: The case in chief of the plaintiffs is closed, subject to the production by Mr. Ridout of the contract of June 19, 1902, called for, the filing of the Malnati contract, or an agreed copy thereof, heretofore offered in evidence, and the filing of certain proposed unpaid notes referred to on page 47 of the record.

Memoranda.

For Complainants' Exhibit No. 1, see page 26 of this record.
For Complainants' Exhibit No. 2, see stipulation of Counsel.
For Complainants' Exhibit No. 3, see page 30 of this record.
For Complainants' Exhibit No. 4, see page 33 of this record.
For Complainants' Exhibit No. 5, see page 39 of this record.
For Complainants' Exhibit No. 6, see page 51 of this record.

57 COMPLAINANTS' EXHIBIT 7.

Statement Rendered by Mr. Campbell Dec. 31, 1903, as a Basis of Settlement. Sale was to be Closed on Saturday, 2d Jan'y.

JAN. 11/04.

We hereby certify that we personally know this to be the statement of (%) given Mr. T. C. Daniel by Mr. C. M. Campbell as a true statement of the building enterprise of the ten two family apartment houses on R. I. Ave. in Northwest Eckington, said statement being delivered either the 30th or 31st of Dec. 1903.

JOHN E. MITCHELL.
C. D. BURNELY.

April	15.	Inc. Sanitary Dwelling Co	204.00
May	7.	C. D. Burnely	17.28
June	14.	Paid on Trust	14.40
	16.	Paid on Trust	500.00
	17.	T. C. Daniel	500.00
	21.	C. D. Burnley	15.84
	26.	T. C. Daniel	122.91
	28.	C. D. Burnley	17.28
July	5.	C. D. Burnley	12.86
	11.	Ralston & Siddons	3.75
	12.	C. D. Burnley	15.84
	15.	Marie Siemers	4.15
	19.	W. O. Sullivan	65.00
		C. D. Burnley	10.58
	26.	C. D. Burnley	11.54
Aug.	1.	Fahey & Co.	83.00
	2.	C. D. Burnley	10.54
	5.	Wash. Savings Bank	5.00
	15.	C. D. Burnley	18.00
	16.	C. D. Burnley	10.00
Sept.	13.	C. D. Burnley	15.00
			1,656.97
1902.			
Sept.	13	Am't Brought For'd	1,656.97
	18.	McGill and Wallace	51.00
	20.	C. D. Burnley	15.00
	21.	C. D. Burnley	25.00
Oct.	25.	Andrew B. Graham (Voucher #29)	10.00
Nov.	6.	Collector of Taxes	10.00
	28.	Fahey & Co.	200.00
Dec.	8.	Eckington Taxes	957.55
	9.	Eckington Permit	19.35
	"	Expense of Deposit	65.00

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	10. Eckington Walls	3.00
	10. T. C. Daniel	187.50
	12. Expense of First Loan	224.25
	" Paid on Trust	2,250.00
	24. S. M. Wallace	80.00
	25. J. W. Keys	15.00
	31. Eckington Lot	300.00
1903.		
	" Eckington Plans	50.00
Jan'y	3. A. M. Cowell	200.00
	7. Fahey & Co.	200.00
	8. Armat Co.	50.00
	10. A. M. Cowell	200.00
	" S. M. Wallace	25.00
	13. A. M. Cowell (Sand)	175.00
	15. Armat Co.	25.00
	17. S. M. Wallace	25.00
	" A. M. Cowell	200.00
	18. Armat Co.	45.00
	20. Andrew C. Plant	12.00
	23. S. M. Wallace	40.00
	" A. M. Cowell	300.00
	" Standard Stone Co.	75.00
	24. Fahey & Co.	100.00
	27. T. Cushing Daniel	30.00
	30. N. R. Grimm	25.00
	" S. M. Wallace	25.00
	" Standard Stone Co.	150.00
	" A. M. Cowell	250.00
	31. Survey of Second Row	5.00
Feb'y	1. T. C. Daniel	50.00
	6. A. M. Cowell	400.00
	7. Fahey & Co.	100.00
	13. A. M. Cowell	1,175.00
	" T. Cushing Daniel	50.00
		10,051.62
1903.		
Feb'y	13. Am't Brought For'd	10,051.62
	" S. M. Wallace	75.00
	14. F. H. Smith Co.	25.00
	19. Wm. N. Ward	50.00
	20. S. M. Wallace	55.00
	21. A. M. Cowell	300.00
	23. T. C. Daniel	20.20
	26. Standard Stone Co.	75.00
	" John E. Mitchell	3.50
	27. S. M. Wallace	90.00
	28. L. W. Riley	50.00
Mar.	4. Collector of Taxes (sewer)	90.00
	" Henry A. Farnham (blue prints)	5.95

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	6.	J. W. Keys	45.00
	7.	J. C. Thompson	125.00
	"	L. W. Riley	25.00
	12.	S. M. Wallace	35.00
	"	J. C. Thompson	275.00
	14.	Huddleston & Co.	50.00
	18.	Collector Taxes	112.00
	"	Collector Taxes	19.35
	20.	H. C. Gossage	25.00
	"	J. W. Keys	42.00
	21.	L. W. Riley	9.50
	24.	J. B. Shinn, Jr.	10.00
	27.	J. C. Thompson	125.00
	"	G. M. Huddleston	65.00
	"	J. W. Keys	70.00
	30.	H. C. Gossage	50.00
April	2.	McGill & Wallace	9.00
	3.	A. M. Cowell	450.00
	"	J. C. Thompson	110.00
	"	J. W. Keys	83.00
	6.	G. M. Huddleston	10.00
	10.	A. M. Cowell	400.00
	"	J. W. Keys	90.25
	"	J. C. Thompson	175.00
	"	Collector Taxes	68.00
	11.	H. C. Gossage	50.00
	17.	A. M. Cowell	400.00
	"	J. W. Keys	53.00
	"	S. M. Wallace	8.00
	"	H. C. Gossage	20.00
	24.	A. M. Cowell	450.00
	"	J. W. Keys	86.25
	"	S. M. Wallace	4.00
			14,440.62
1903.			
April	24.	Am't Brought For'd	14,440.62
	25.	H. C. Gossage	35.00
	29.	J. C. Thompson	10.00
	"	Gas Co. Eckington	10.00
May	1.	A. M. Cowell	500.00
	"	J. W. Keys	63.00
	"	S. M. Wallace	3.00
	"	S. M. Wallace	2.00
	6.	J. C. Thompson	85.00
	8.	A. M. Cowell	450.00
	"	J. W. Keys	42.00
	"	H. C. Gossage	15.00
	"	S. M. Wallace	1.50
	11.	Ralston & Siddons	400.00

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	13.	Fahey & Co.	200.00
	14.	Expense secure Loan	376.90
	"	Columbia Sand Co.	75.00
	15.	Wash. Savings Bank	204.35
	16.	A. M. Cowell	300.00
	16.	A. M. Cowell (Ford)	300.00
	"	H. C. Gossage	45.00
	"	J. W. Keys	72.00
	"	J. W. Keys	77.50
	"	H. C. Gossage	30.00
	25.	A. M. Cowell	150.00
	26.	Knott & Mohler	100.00
	"	Standard Stone Co.	75.00
	"	Inside Finish	264.95
	22.	W. T. Brooks	50.00
	28.	J. C. Thompson	2.00
	29.	Geo. M. Huddleston	50.00
	"	S. M. Wallace	11.00
	"	Wash. Gas-Light Co.	13.10
	"	J. W. Keys	84.00
	"	H. C. Gossage	25.00
	"	S. M. Wallace	20.00
June	1.	J. C. Redman	304.50
	4.	Wm. N. Ward	500.00
	"	Wash. Gas-Light Co.	52.40
	5.	A. M. Cowell (Ford)	1,000.00
	"	J. C. Thompson	140.00
	"	J. W. Keys	80.00
	"	J. C. Thompson (Wallace)	5.00
	12.	J. C. Thompson	225.00
	"	J. C. Thompson (Wallace)	5.00
	"	J. W. Keys	48.00
			20,942.82
1903.			
June	19.	Am't Brought —	20,942.82
	"	J. C. Thompson	105.00
	"	S. M. Wallace	30.00
	"	H. C. Gossage	15.00
	"	S. M. Wallace	5.00
	20.	L. P. Darrell (Adv. Agency)	2.00
	26.	J. C. Thompson	30.00
	"	J. C. Thompson	30.00
	"	H. C. Gossage	15.00
	29.	A. M. Cowell	36.00
July	2.	S. M. Wallace	2.25
	"	S. M. Wallace	5.00
	"	S. M. Wallace	39.37
	"	J. C. Thompson	60.00
	3.	J. C. Thompson	10.00

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	" National Mosaic Co	32.00
	2. H. C. Gossage	15.00
	10. J. C. Thompson	65.00
	" S. M. Wallace	30.00
	" H. C. Gossage	20.00
	" S. M. Wallace	7.00
	" J. D. Masson (carpenter)	15.00
	13. Knott & Mohler	37.10
	14. Citizens' Nat'l Bank (Riley)	37.50
	15. Wash. Savings Bank	204.75
	17. A. M. Cowell	50.00
	" J. C. Thompson	15.00
	" J. C. Thompson	75.00
	" John C. Brown (carpenter)	15.00
	" Jas. Masker "	5.00
	" Wm. Martin "	10.00
	" H. C. Gossage	15.00
	" Jas. Masson	15.00
	" S. M. Wallace	30.00
	" S. M. Wallace	3.50
	24. A. M. Cowell	100.00
	" S. M. Wallace	30.00
	" S. M. Wallace	32.00
	" S. M. Wallace	20.00
	" Columbia Sand Co	50.00
	25. J. C. Thompson	50.00
	27. Wm. N. Ward	500.00
	24. H. C. Gossage	15.00
	20. Barber & Ross	125.00
	31. S. M. Wallace	88.50
		23,034.79
1903.		
July 31.	Am't Brought For'd	23,034.79
	A. M. Cowell	100.00
Aug.	6. T. C. Daniel	25.00
	8. S. M. Wallace	80.00
	17. S. M. Wallace	96.00
	20. Rudolph West & Co	100.00
	21. S. M. Wallace	95.00
	29. S. M. Wallace	85.00
Sept.	3. Lincoln Nat'l Bank	9.00
	4. S. M. Wallace	65.00
	6. A. M. Cowell	400.00
	" S. M. Wallace	45.00
	8. Wash. Savings Bank	210.95
	" Metropolitan "	86.28
	" Citizens' Nat'l Bank	107.50
	9. Wash. Gas-Light Co	58.00

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	11.	S. M. Wallace	62.00
	"	J. C. Thompson (Wallace)	30.00
	14.	Standard Stone Co	206.00
	"	Second Nat'l Bank	109.00
	17.	A. M. Cowell	100.00
	18.	S. M. Wallace	49.00
	"	Chas. Stickles	50.00
	19.	J. C. Thompson	60.00
	25.	S. M. Wallace	48.00
	"	Chas. Stickles	50.00
	28.	Columbia Sand Co	103.00
Oct.	2.	Wm. N. Ward	50.00
	"	S. M. Wallace	53.50
	"	Chas. Stickel	50.00
	6.	Hutchinson & Harbine	7.00
	7.	Geo. D. Horning (Mitchell)	77.14
	"	Lincoln Nat'l Bank	125.01
	9.	S. M. Wallace	46.00
	10.	M. Roche	119.54
	12.	Citizens' Nat'l Bank (note)	537.50
	"	Barber & Ross	100.00
	9.	Aaron Smith	25.00
	15.	A. M. Cowell	100.00
	"	Wash. Gas-Light Co	19.00
	16.	S. M. Wallace	30.25
	19.	Columbia Sand Co	66.37
	20.	Knott & Mohler	48.24
	"	Warren & Dyer	45.05
	27.	S. M. Wallace	25.00
			26,989.12
Oct.	27.	Am't Brought For'd	26,989.12
		Wm. N. Ward	500.00
	28.	Columbia Sand Co	100.50
	"	Citizens' Nat'l Bank	230.00
	30.	Knott & Mohler	6.45
Mar.	23.	Julius Weineg	3.00
June	6.	Ward Note	200.00
Nov.	2.	A. M. Cowell	80.00
	6.	Wm. N. Ward	100.00
	7.	S. M. Wallace	20.00
	12.	T. C. Daniel	250.00
	13.	S. M. Wallace	15.00
	19.	Rudolph West & Co	143.08
	30.	S. M. Wallace	25.00
Dec.	1.	Wash. Gas-Light Co	209.00
	2.	Kuhling & Co. (inst.)	1.50
	"	W. H. Spelshouse	48.10
	5.	S. M. Wallace	15.00
	"	A. M. Cowell (Daniel)	107.95

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	12. S. M. Wallace		15.00
	14. Rudolph West & Co		109.55
	" Second Nat'l Bank		57.50
	23. T. C. Daniel		100.00
			29,325.75

DEBIT.

	Proceeds of loan	25,000.00	
May	14. Return check F. H. Smith Co	4.06	
Dec.	12. Return check F. H. Smith Co	22.75	
	9. Deposit R. I. Ave., returned	65.00	
			25,091.81
			4,233.94

Memorandum.

For Exhibit Complainants' Exhibit 8, see Stipulation of Counsel.

Memorandum of Complainants' Exhibits, from 9 to 16, Both Inclusive, as Called for in Stipulation of Counsel.

1903.

Date.	Amount.	Maker.	Payee.
May 21.	$300.	T. C. Daniel.	C. M. Campbell.
" 23.	150.	T. C. Daniel.	Albert M. Cowell.
Sep. 23.	100.	T. C. Daniel.	Cash.
Nov. 2.	250.	T. C. Daniel.	C. M. Campbell.
" 19.	100.	T. C. Daniel.	Cash.
" 24.	200.	T. C. Daniel.	A. M. Cowell.
Dec. 2.	3.63	T. C. Daniel.	Cash.
" 4.	107.95	T. C. Daniel.	Citizens' Nat'l Bank.

Maker.	Endorser, payee.	Time.	Date.	Amount.	Date of protest.
Northwest Eckington Improvement Co., Samuel C. Redman, Pres't.....	T. C. Daniel..... S. C. Redman..... C. M. Campbell.....	90 days..	1903, Oct. 20	$175.00	1904, Jan. 18
T. C. Daniel..... Sam'l C. Redman..... C. M. Campbell.....	C. A. Muddiman and Company.	90 days..	1903, Oct. 30	120.00	Unpaid.
Northwest Eckington Improvement Company, Samuel C. Redman, Pres't.....	T. C. Daniel..... C. M. Campbell..... Warren & Dyer.....	90 days..	1903, Oct. 20	175.00	Protested.
Northwest Eckington Imp. Co., Samuel C. Redman, President.....	Rudolph West and Co..... C. M. Campbell .... T. C. Daniel..... Samuel C. Redman.	90 days..	1903, Oct. 19	378.25	Protested.
C. M. Campbell..... T. C. Daniel..... S. C. Redman	Thos. R. Riley.....	90 days..	1903, Oct. 12	2,000	Unpaid.
Northwest Eckington Improvement Company, Samuel C. Redman, President	T. C. Daniel ..... S. C. Redman..... C. M. Campbell ..... Knott & Mohler....	90 days..	1903, Oct. 21	100	Protested.

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509 Seventh Street, N. W.

COMPLAINANTS' EXHIBIT 40.

WASHINGTON, D. C., *June 15th*, 1903. No. —.

Second National Bank.

Pay to the order of Cash..... $600.00
Six hundred.....00/100 Dollars.
Paid.

T. C. DANIEL.

[Stamped across face in red ink:] Second Nat'l Bank. Paid Jun- 16, 1903. Washington, D. C.

(Endorsed:) C. M. Campbell. Citizens' National Bank Washington City. Jun- 16 1903.

Memoranda.

Exhibits Identification "J. A. L." Nos. 1, 2 and 3 referred to on page 82 of Complainants' Testimony in chief and described as checks of C. M. Campbell, for $150.; $300 and $250, are missing from files.

For Exhibits Identification "J. A. L." Nos. 4 and 5 see Exhibits Defendant 11 and 12, page 376 of this record.

COMPLAINANTS' EXHIBIT 42.

Per C. M. Campbell's Account.

Amounts Received and Amounts Disbursed by Him from November 28, 1902, to December 23, 1903.

1902.			
Dec. 3.	Received cash	$2,500.00	
26.	Received cash	3,000.00	
			$5,500.00
	Amount paid out from November 28, 1902, to January 27, 1903		5,413.15
	Balance in hand		$86.85
	Balance brought down	$86.85	
Feb. 13.	Received cash	2,500.00	
M'ch 25.	Received cash	2,000.00	
" 26.	Received cash	2,500.00	
			$7,086.85
	Amount paid out from January 27, 1903, to March 27, 1903		3,912.30
	Balance in hand		$3,164.55

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		Balance down	$3,174.55	
Ap'l	1.	Received cash	2,500.00	
"	2.	Received cash	3,000.00	
May	13.	Received cash	2,500.00	
June	4.	Received cash	2,000.00	
				$13,174.55
		Amount paid out from March 27, 1903, to June 5, 1903		8,097.28
		Balance in hand		$5,077.27
		Balance down	$5,077.27	
June	16.	Proceeds our note	600.00	
			$5,677.27	

NOTE.—(On June 6 we gave A. M. Cowell joint note for $500.00.)

		Balance forward	$5,677.27	
		Amount paid out from June 12, 1903, to July 17, 1903		$1,194.37
		Amount paid out from July 17, 1903, to September 9, 1903		1,927.33
				$3,121.70
		Balance down	$2,555.57	
Sep.	14.	Received cash	1,000.00	
"	28.	Received cash	1,000.00	
Oct.	26.	Received cash	500.00	
				$5,055.57
		Amount paid out from September 9, 1903, to October 27, 1903		2,191.60
		Balance in hand		$2,863.97
		Amount paid out from October 27, 1903, to December 23, 1903		1,878.66
		Balance in hand		$985.31
		Add credits in account		91.81
		Balance remaining in his hands December 23, 1903		$1,077.12
		This is exclusive of Sanitary Dwellings account		$1,767.97
		and Erroneous Entries		2,614.95

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COMPLAINANTS' EXHIBIT 43.

Thomas R. Jones, President; E. Francis Riggs, Vice-President; William D. Hoover, Second Vice-President and Trust Officer; George Howard, Treasurer; Charles E. Nyman, Secretary; Frank W. Stone, Assistant Treasurer.

Incorporated by Special Act of Congress Jan. 22nd, 1867. Reorganized Under Act of Congress Oct. 1st, 1890, and Special Act of Congress Feb. 18th, 1892.

The National Safe Deposit Savings and Trust Company of the District of Columbia.

Capital, $1,000.00.

Copy made October 26, 1904.

WASHINGTON, D. C., *Dec.* 17, 1902.

T. C. Daniel, Esq., #627 E Street, N. W., Washington, D. C.

DEAR SIR: Enclosed we send you check of this Company, payable to your order, in the amount of Two Hundred and forty eight dollars. This is in settlement of the recent adjustment of the amount due by you on your notes secured on Lot 35 in "Metropolis View," which notes are now held here for collection to the credit of the account of Mrs. Elenora T. Franz.

It appears that in the matter of adjusting the amount due on the notes, which was arranged by you and Mr. Howard last summer, no account was taken of the notes of one Smith, which you had deposited here for credit to the account of the Franz notes, upon payment. For this reason you are entitled, as we understand it, not only to the unpaid notes of Smith, which were delivered to you a few days ago, but also to the principal, $200., of one of the notes, which was paid in September, and also to the semi-annual instalment of interest, $48., which accrued and was paid at that time.

Yours truly,

———— ————,

Trust Officer.

Address all communications to the Company.

COMPLAINANTS' EXHIBIT 44.

The National Safe Deposit Savings and Trust Company of the District of Columbia.

Capital, $1,000.00.

WASHINGTON, D. C., *November* 18, 1903.

Mr. T. C. Daniel, #1408 G Street, N. W., City.

MY DEAR DANIEL: I have received your letter of yesterday, and am further directed by Mrs. Franz to say that unless this interest is immediately paid, she will order a sale under the deed of trust.

68 Mrs. Franz appears to be very much in earnest, and I am confident that any delay in this matter will be very dangerous.

Yours truly,

WM. D. HOOVER,
Trust Officer.

509 Seventh Street, N. W.

COMPLAINANTS' EXHIBIT 45.

WASHINGTON, D. C., *Dec. 24th,* 1903. No. —.

Second National Bank.

Pay to the order of Cash.....$100.00
One hundred.....00/100 Dollars.

[Stamped across face in red ink:] Second National Bank. Paid Dec. 26, 1903. Washington, D. C.
T. C. DANIEL.

Endorsed: C. M. Campbell. Citizens' National Bank of Washington City. Dec. 26, 1903.

Testimony on Behalf of Defendant.

Filed October 31, 1905.

In the Supreme Court of the District of Columbia.

Equity. 24463.

NORTHWEST ECKINGTON IMPROVEMENT COMPANY, a Corporation; SAMUEL C. REDMAN, and T. CUSHING DANIEL,
v.
CHARLES M. CAMPBELL.

WASHINGTON, D. C., *December 31st,* 1904.
10 o'clock A. M.

Met, at the office of attorney for defendant in the Fendall Building, 344 D Street, N. W., Washington, D. C., on Saturday, December 31st, 1904, at 10 o'clock A. M.

Present: Mr. Siddons on behalf of the complainants, and Mr. T. C. Daniel.

Mr. Ridout on behalf of the defendant; also CHARLES M. CAMPBELL the defendant herein, appearing as a witness in his own behalf, and who having been first duly sworn, testified as follows:

Direct examination.

By Mr. RIDOUT:

Q. Please state your name and residence?

A. Charles M. Campbell; 1343 Harvard Street, Washington, D. C.

69 Q. Mr. Campbell, you are the defendant in this suit, are you not? A. Yes, sir.

Q. When and by whom was your attention first brought to the property in controversy in this suit? A. I was approached in the matter of the property in October or November by Mr. Daniel.

Q. What year? A. 1901—in Washington.

Q. Mr. Daniel has testified that the first conversation on that subject took place in New York in January, 1902. What is your recollection on that subject? A. I was not in New York during the winter of 1901 and '2 and the conversation could not have taken place there.

Q. At that conversation what was said by him to you on the subject of this property? A. He asked me to go out and look at a piece of property in the country.

Q. Do you mean the property described in this suit? A. Yes.

Q. What proposition, if any, did he make to you at that time? A. We went out and looked at the property. We went out to Eckington in the street cars and went north on the streets so far as the asphalt went, and we walked up to where the street car line branched off to go to Berwyn, Maryland. We went up the street car track about four or five hundred feet to a point on a piece of land. He said it belonged to the Northwest Eckington Improvement Company, but that the company was composed of him and Mr. Redman. He described the property to me. I looked it over and saw that part of it was very much under grade and was being farmed. It was irregular in outline and ran over to the railroad track; and across the north end of the ground diagonally ran a street car line on the line of what would be Rhode Island Avenue if that street extended from a point about a half mile southwest of this ground over the hill. He told me the ground practically belonged to him and Mr. Redman; that it had a thirty-two or thirty-three thousand dollars deed of trust on it; that it had become very burdensome to them, that they had carried it a long time; that he and Mr. Redman thought it was wise to get somebody else to join them in carrying the property, and that it would be a good plan to build a few houses on the line of the street car line. There were then two or three old frames on the line of the railroad and one old brick worth about $200. And he said that one of those frames he had built and was successful in renting it, and that other property would pay there. And he said, if I felt inclined to join them in helping to carry the property, he would make me a very favorable offer. I inquired of the amount of the trust and the size of the tract. I found it was about ten acres and that the trust ran to about thirty-two or thirty-three hundred dollars an acre. And I told him that I was about to engage in building some houses of my own—unimproved property that needed improvement very badly, and I didn't see that it would pay me to go into the building of houses for other people on this tract, especially when I did not see any equity in sight.

70 Q. Was the land subdivided at that time? A. No, sir; it was not subdivided. This proposition did not interest me at all and I dismissed it from my mind.

Q. Did Mr. Daniel approach you again on the subject and, if so, when? A. Yes, sir; about two months after that he met me one day on F Street and told me that he was very much discouraged about the property, that they had carried it about as long as they felt able, and that he had either already, or was about to, put it in the hands of a real estate dealer and let it go for what it would bring, that he was determined to get rid of it. I told him that in his discouraged frame of mind he might do something precipitate, and not to take that step until he thought the matter over, and I would discuss it with him. And within a day——

Q. Did any further discussion take place between you and him on that subject? A. Yes. Within a day or two after that I told him I thought it might be a very good plan and feasible to organize a Sanitary Dwellings Company similar to one that was then already organized in the city and very successful; that this dwellings company might build cheap tenement houses on this property, take it over, issue stock and pay part cash, and pay for the property partly in stock; and even if the stock was only worth fifty cents on the dollar it would probably be a great improvement on the present situation.

Q. What, if anything was done in response to that suggestion of yours? A. Well, Mr. Daniel caught at that idea very eagerly. He wanted to go and look at these sanitary dwellings. I went and looked at them with him. I also went to General Sternberg, and I think he was along, but I would not be positive, to find out the cost of the houses, and found the cost was about——

Mr. SIDDONS: Now, I object to this testimony in regard to any conversation with General Sternberg unless it appears that Mr. Daniel was present.

A. (continued). Well, I will put it this way: I went to see General Sternberg, and I reported to Mr. Daniel that General Sternberg said that the houses cost about twenty-eight or twenty-nine hundred dollars apiece.

Q. What report, if any, did you make to Mr. Daniel concerning the cost of the houses? A. I reported to him that General Sternberg said the houses cost from twenty-seven to twenty-nine hundred dollars—about an average of twenty-eight hundred dollars apiece.

Q. What was the next step in the matter? Did you make any suggestion to Mr. Daniel as to the course to be pursued in improving this property and, if so, what was it? A. It is hard to recall the regular order of events.

Q. Give the events as you recall them without attempting to confine yourself to the strict chronological order. A. Well, Mr. Daniel, as I have already stated, caught eagerly at the idea——

Mr. SIDDONS: I don't think it is necessary to repeat what you have already said.

A. (continued). Mr. Daniel proposed to me that we go
71 ahead with this sanitary dwellings idea, and that if I would organize such a company——

Mr. SIDDONS: Now, I must object, because whatever proposals were made have been incorporated in a written contract, and the terms and conditions of that contract are the best and only evidence.

Q. Was any suggestion made either by Mr. Daniel or yourself as to the number of houses to be built at first? A. You mean after I saw General Sternberg?

Q. Yes. A. Yes. The idea was to build—well, the idea then was to organize a sanitary dwellings company and leave the building of the houses to it.

Q. How many were to be built at one time?

Mr. SIDDONS: I object. The contract regarding the sanitary dwellings company is in writing and speaks for itself.

Q. Was the sanitary dwellings company plan finally carried out or not? A. Yes, sir.

Q. Were any houses built under it? A. No, sir.

Q. What plan was finally adopted in respect to building the houses? A. The plan finally adopted was based on a proposition that private capital be enlisted in carrying out the construction of these houses.

Q. What arrangement in that direction was made? A. Mr. Daniel wanted to know of me if I would join him in such an enterprise——

Mr. SIDDONS: I object. A contract was made between the parties upon which they acted and that contract is the evidence of what the plan was that was finally carried out.

Mr. RIDOUT: The complainants have gone at length into this line of examination, and the defendant proposes to follow it.

Q. What proposition, if any, did he make concerning your interest in the property?

Mr. SIDDONS: Objected to for the reasons stated above, and counsel for complainants will move to strike out the answer as clearly incompetent and inadmissible.

A. He proposed to me that I join him in the erection of such houses, and that if I would, that he would give me a one-third interest in the property. I told him that that was an entirely new proposition, and very grave questions arose in connection with it. I held several conversations with him on this subject stretching over two or three weeks. I went to see my counsel——

Q. That is as far as you can go on that line. You cannot state any conversation unless Mr. Daniel was there. A. (Continuing:) As a result of that visit I had several very frank conversations with Mr. Daniel on the subject, and I told him that I had been advised that there was a very good prospect of litigation if I went into this deal, that he had been engaged, as I understood, in a number of law suits.

72 Mr. SIDDONS: Now, I move to strike that testimony out as utterly incompetent, inadmissible and irrelevant.

A. (continued). Mr. Daniel replied that there was nothing in that

objection. I told him also that I had been looking into the value of acreage property in that locality, and asked him particularly in regard to a sale in the preceding October of property that adjoined this and lay between this property and the city, and that I considered it very much more valuable than the property he represented. I asked him if he was familiar with that sale, and he said he was, and I think he said he attended it. And I asked him if he was aware——

Mr. SIDDONS: I move to strike that testimony out, as irrelevant, immaterial and incompetent, and not responsive to the question propounded to the witness.

A. (continued). That the tract had sold for $2,800 an acre. He replied that that sale was not of any significance, as it was a foreclosure, and it had been bought in by interested parties.

Mr. SIDDONS: I make the same motion to strike out.

A. (continued). I told him it had been duly advertised——

Q. What you said to him is not competent. Was any discussion had between you and Mr. Daniel as to the financial responsibility of himself and Mr. Redman, and if so, what was it? A. Yes, I raised that point particularly. I told him such an enterprise would require some capital. I asked him if he and Mr. Redman were prepared to carry on their end of it, that I under no circumstances would advance the money, as I had done in the sanitary dwellings company.

Mr. SIDDONS: Question and answer objected to as immaterial, irrelevant and plainly an attempt to modify a written contract.

A. He told me that Mr. Redman was an officer in the butter company——

Q. In order to save your time and also expense, I will suggest that you just state the substance. State that he said that Mr. Redman was a responsible man.

A. (continued). —and he said he had banking connections, and that he, Mr. Daniel, was also prepared to take care of his end of the deal through the Second National Bank.

Q. What inquiry, if any, did you make of Mr. Daniel concerning the incumbrance then upon the property held by Mrs. Franz? A. I asked Mr. Daniel what shape the trust was in, whether there was any danger of foreclosure from Mrs. Franz; and he told me that he thought the $500 that had been paid in June to Mrs. Franz would satisfy her, and that she would not foreclose; that she already had a deed given her in security, and she would have no reason to foreclose; that he would go and see her and find out what her attitude was.

Q. How was the $500 to which you have referred, paid? A. It was paid through Mr. Daniel to the trust company on June 16th.

Q. How was the money provided? A. It was provided by me.

Q. Did he make any report to you as a result of his con-
73 versation with Mrs. Franz? A. Yes, he reported he had seen Mrs. Franz and he found he was right in his prediction, that she was in a satisfactory frame of mind.

Mr. SIDDONS: I suppose that was June, 1902, but the witness does not say so.

A. June 16th, 1902.

Q. Was any suggestion made by Mr. Daniel as to the amount to be borrowed on the proposed houses? A. Yes. He thought that $3,000 could probably be borrowed on each house, and he went ahead on his own hook and made an application for a loan of that amount on some plans which he secured somewhere; and this loan was afterwards turned down. The property was too far out.

Mr. SIDDONS: I want to object to the testimony of this conversation, for the further reason that neither time nor place has been fixed for them.

Q. During what period did the conversations, the substance of which you have given, occur? A. They took place late in the summer of 1902.

Mr. SIDDONS: This line of testimony is further objected to on the ground that there is no claim made that any false representations were made by Mr. Daniel or Mr. Redman to Mr. Campbell, and that the parties entered into a written contract in October, 1902, which is the only matter in controversy here, that is, the construction of it and the rights under it.

Q. I hand you a letter dated August 6th, 1902, addressed to you, and I will ask you to state whose signature is at the bottom of it (handing letter to witness)? A. Mr. Daniel's signature.

Mr. SIDDONS: Of course the letter is objected to on the same grounds that the conversations were objected to, as merely bearing on negotiations which resulted in the written contract between the parties, now in evidence.

Mr. RIDOUT: The letter is offered in evidence and is marked Exhibit Defendant No. 1.

Mr. SIDDONS: Mr. Campbell wrote a letter to Mr. Daniel to which Mr. Daniel replied on the 19th of August, 1902. This is a letter addressed to Mr. Campbell when Mr. Daniel was in New London, shortly prior to the 19th of August, 1902, because Mr. Daniel's reply is dated August 19th, 1902, and I call for the production of that latter.

Q. Where were you when you received the letter just offered in evidence? A. At Ocean Grove, New Jersey.

Q. What action did you take subsequent to the receipt of that letter and after your return to Washington?

Mr. SIDDONS: I object to any testimony, documentary or verbal, involving negotiations and statements made which led up to the making of the contract of October 26th, 1902.

74 It is understood that this objection shall go to all such testimony subsequently offered.

A. I was somewhat uneasy in regard to the verbal statement that he and Mr. Redman were to provide their share of the money, and so I wrote to him at New London, Connecticut, and told him——

Mr. SIDDONS: I object. We are called upon to produce the letter.

Q. Did you receive a reply to that letter? A. Yes, sir.
Q. State whether or not that is the reply (handing letter to witness)? A. Yes, sir.

Mr. RIDOUT: I offer this letter in evidence to be marked Exhibit Defendant No. 2.
Mr. SIDDONS: That goes in subject to the same objection.

Q. What was the condition of the property in controversy in connection with the railroad development at the time the letter just offered in evidence was written. A. A bill had passed Congress looking to certain railroad improvements, but the situation was very nebulous in regard to what effect it would have on property in that region, and also on the point as to what the railroad would do.
Q. When was the contract offered in evidence by the complainants and dated October 23rd, 1902, prepared and by whom? A. It was prepared by me in Mr. Daniel's office in October, 1902, or about that time.
Q. Was Mr. Daniel present when you prepared it? A. Yes, sir.
Q. Who filled in such blanks as were left in the contract? A. Mr. Daniel did.

Mr. SIDDONS: Question objected to as it assumes that there were blanks in the contract to be filled in.

Q. Was the contract then executed? A. No, sir.
Q. Why? A. I objected to executing the contract until after the stockholders of the company had passed on it and approved it; but in the meantime the date had been filled in.
Q. What date had been filled in? A. October 23rd, 1902, by Mr. Daniel.
Q. When was it actually executed? A. It was executed a day or two after the meeting of stockholders. This meeting was held November 26th, I believe, 1902.

Mr. RIDOUT: Mr. Siddons, I will ask you to produce the minutes of the stockholders' meeting of the Northwest Eckington Improvement Company, held on or about November 26th, 1902.

Q. After the contract just referred to was executed finally, what was done under it? A. I went right ahead to fulfill the obligations of the contract. I signed an agreement prepared by the officers of the trust company guaranteeing the payment of this trust, the erection of these houses, the payment of taxes——

Mr. SIDDONS: Now, I object to Mr. Campbell giving the contents of papers.

75 A. (continued). —back taxes and assessments—all taxes and assessments; and also made an application for a building loan of $12,500.
By Mr. SIDDONS: Was that application in writing? A. Not that I know of. It may have been. I don't know.

Mr. RIDOUT: He has not given the contents of it.

Mr. SIDDONS: Yes, he has. He said he made an application for a loan of $12,500. I object to his giving the contents of papers.

By Mr. RIDOUT:

Q. To whom was that application made? A. To the F. H. Smith Company.

Q. Was it signed by you or Mr. Daniel? A. I believe the application was signed by all of us.

Mr. SIDDONS: Question objected to as giving the contents of the paper.

Mr. RIDOUT: That was testified to on the other side, that very statement. Mr. Daniel stated that the application was made and signed.

Q. Was the $12,500 loan obtained. A. Yes.

Q. To whom were the proceeds of that loan paid? A. Paid to me, less certain payments that were made.

Q. Have you any statements from the lending company showing what was the sum paid to you? A. Yes, sir. They paid me——

Q. Have you it with you? A. Yes.

Q. Produce that if you have it. A. I am not sure I have it. I think I have.

Q. Can you recall the sum received by you, or approximately at any rate? A. Out of the whole loan?

Q. I want to ascertain what deductions were made before the proceeds reached your hands.

Mr. SIDDONS: That is objected to because the statement gives that.

Mr. RIDOUT: You don't mean to say that this witness' testimony as to the money that came into his hands is not as good as any statement made by a third party.

Mr. SIDDONS: If there is any paper in his possession showing the payments, we want the paper.

Mr. RIDOUT: I want him to testify to it.

Mr. SIDDONS: If he can say how much he received net let him say it.

(Witness hands paper to Mr. Ridout.)

Q. I mean the aggregate deductions, if you remember them, and the net sum paid you. A. Well, as I remember, there was not anything paid me out of the first payment, or a very small amount. The payment to Mrs. Franz and the cost of the loan absorbed the whole loan, or very nearly absorbed it.

Q. Do you mean the whole loan or the first installment of it? A. The first installment of the loan.

Q. What was the amount of the first installment? A. $2,500, I believe. That was the amount of it, $2,500.

76 Q. What, if anything, was necessary to be done in respect to obtaining title to any property included within the lines of this property, before the building loan was obtained? A. Well, the Smith company in running down the title, found that a lot had been sold in the property that had to be bought back before the title could be perfected, and back taxes running to almost $1,000

had to be paid, all of which payments I was called upon to make before the loan was negotiated—before the loan was completed.

Q. Was the lot you speak of purchased? A. Yes.

By Mr. SIDDONS:

Q. You say all of it you had to pay before the loan was negotiated, or before the loan was concluded? A. All of it had to be paid before the loan was concluded, or during that month. I cannot recall the exact dates.

By Mr. RIDOUT:

Q. Do you remember what it cost? A. It cost $300.

Q. How much per foot was that? A. About three and a half cents per foot. According to a memorandum left with me there were 10,074 feet.

Mr. SIDDONS: Now, I object.

Mr. RIDOUT: If that was not given to you by Mr. Daniel, it is not competent testimony.

A. It was given to me by Mr. Daniel.

Mr. SIDDONS: Even if it was given to him by Mr. Daniel, he cannot state what it contained. He must produce the memorandum.

A. I will produce the memorandum (handing paper to his counsel).

Q. Is this the memorandum to which you refer? A. Yes, sir; this is the memorandum that was sent me by Mr. Daniel.

Mr. SIDDONS: Do you want to show that there were $300 paid for the lot and there were 10,000 feet in the lot?

Mr. RIDOUT: You cannot use that memorandum (to the witness).

A. Then, I cannot certify to what the cost was per foot. I don't know how many feet there were in the lot.

Q. Do you know the number of the lot? A. No; I don't know the number of the lot or how many feet. All I had was this memorandum.

Q. Do you know in whose handwriting this memorandum is? A. I think it is Mr. Winfield's.

Mr. SIDDONS: That is his handwriting.

Q. Was the $300 paid for this lot, paid out of the proceeds of this loan? A. No, I advanced that during the month of December.

Q. Give the year. A. The month of December, 1902. It was applied for before the first payment was made, but the payment may have been actually made a little later in the month.

77 Q. How much was paid Mrs. Franz, if you remember? A. From the first payment?

Q. Yes. A. I think $2,250.

Q. At the time when the proceeds of the loan to which you have referred became available, what sum, if any, had you paid out of your own funds on account of this enterprise? A. Exclusive of the Sanitary Dwellings Company?

Q. Yes. A. Exclusive of the Sanitary Dwellings Company, but including the $500 I paid Mrs. Franz, I had paid about $4,150 before any funds became available.

Q. How much had you paid on account of the Sanitary Dwellings Company's expenses? A. I had paid about $480. That is my recollection—exclusive of the payments to Mrs. Franz.

Whereupon an adjournment was taken to meet at the office of Solicitor for Complainants in the Bond Building, corner of 14th and New York Avenue, N. W., in this City, on Monday, January 2nd, 1905 at 11 o'clock A. M.

MONDAY, *January 2nd*, 1905—11 o'clock a. m.

Met pursuant to adjournment last noted at the office of attorneys for complainants in the Bond Building, corner of 14th and New York Avenue, Washington, D. C., on Monday, January 2nd, 1905 at 11 o'clock, A. M.

Present: Same counsel and parties.

Whereupon the defendant CHARLES M. CAMPBELL resumed the stand for further examination.

By Mr. RIDOUT:

Q. On page 9 of the testimony so far taken I asked you a question the reply to which was interrupted. The question was "Was any discussion had between you and Mr. Daniel as to the financial responsibility of himself and Mr. Redman, and if so, what was it"?

Mr. SIDDONS: Of course the question is objected to as it was objected to at the former hearing, and for the same reasons.

A. Yes, sir. I had a very particular conversation with Mr. Daniel on that subject, as to his ability and Mr. Redman's ability to carry their end of this proposed financial deal. He told me that Mr. Redman was an officer of the butter company and had connections with the Lincoln National Bank, I believe for a number of years, and I believe he said his father before him; and that he was amply able to take care of his end of it. And as to Mr. Daniel he said he had connections with the Second National Bank, and he was quite sure he could take care of his end of it. I told him that this was important, as I could not undertake to advance money as I had in the case of the Sanitary Dwellings Company, and I wanted this understood in advance.

78 Mr. SIDDONS: I move that the answer be striken out on the ground that it is an attempt to explain, alter, or modify a written contract.

Mr. RIDOUT: Have you the letter of August 19th, 1902, that I called for. (To Mr. Daniel.)

Mr. DANIEL: I haven't even had a chance to look for it.

Mr. RIDOUT: Have you the minutes of the Northwest Eckington Improvement Company that I called for?

Mr. DANIEL: No.

Q. Have you the letter I asked for? (December 6th, 1902.) A. I mislaid the letter, I could not find it.

Mr. SIDDONS: What letter is that?

Mr. RIDOUT: Mr. Campbell was under the impression we stopped there, but we went on after that.

A. (continued). I have a copy of it. I made a copy of all my documents in the case for Mr. Ridout, and among them I made a copy of this letter.

Mr RIDOUT: I wish you would see if you have a press copy of the letter of December 6th, 1902, because that would be the next best evidence. (To Mr. Daniel.)

Q. Mr. Daniel testifies on page 23 of the testimony in chief that at the date when the deed given you, was signed, he was not aware that you had advanced any of your own funds. What information had you given him at that time on that subject? A. He was aware of all the funds that I had advanced.

Q. What action did you take when you discovered the amount of expenditure made by yourself out of your own funds up to this point?

Mr. SIDDONS: Up to which point?

Q. Up to the point of the date of the receipt of this letter. A. I consulted my counsel.

Q. Did you take any further action? A. Yes. I presented an extended contract to Mr. Daniel that had some additional provisions in.

Q. Have you that paper? A. Yes, sir; I have that paper (handing paper to counsel).

Q. What was the date of the presentation of that paper to Mr. Daniel? A. December 10, 1902.

Q. Mr. Daniel testifies that a paper was presented to him July 20th, 1903. What is your recollection upon that subject? A. I presented no paper to him on that date.

Q. What action did you take after Mr. Daniel refused to execute the paper which you state you presented for execution on December 10th, 1902? A. I told him that I had advanced too much money to the enterprise already without any corresponding amounts being produced by him or Mr. Redman, and that I would decline to go ahead any further unless this contract or the deed itself was signed for my undivided one-third interest?

Q. Is that the deed? (Handing paper to witness.) A. Yes, sir.

79 Mr. RIDOUT: I offer this deed in evidence, to be marked Exhibit Defendant, No. 3.

Q. What was the plan for improvements then contemplated? I refer to the date of the delivery of that deed, and especially to the number of houses to be erected. A. The plan contemplated the erection of five houses and, if possible, ten houses, on the theory that ten houses would probably carry all the fixed charges on the property.

Q. Was it contemplated to erect forty houses? A. No, sir; never in any case.

Q. What was the purpose of the paper mentioned in Mr. Daniel's testimony and containing figures as to more than ten houses? A. They were some fanciful figures we worked up earlier in the summer at a time when we had the idea that the houses would cost about $2,800 apiece. An examination of the paper itself will show that the price we figured these houses at at that time was $2,800 apiece, whereas later on we advanced the price of those houses about $500 from $2,800 to $3,300, which was the price we had settled upon at the time the contract was drawn or about that time.

Mr. SIDDONS: So much of the witness' response as undertakes to state the contents of the paper is objected to as improper and incompetent, and I move to strike it out.

A. (continued). I will also state that these figures were intended to show what might possibly be done under certain circumstances, but not with any view to any agreement on our part to undertake such a thing.

Q. How much did the houses that were constructed actually cost? A. The houses that were constructed actually cost a little over $34,000 for the ten.

Q. What occasioned the increased cost over the $3,300 estimated? A. Well, the increased cost was caused by Mr. Daniel insisting on the second row of houses being located on the south side of the street car track where the ground was very low. The result of that was that the extra charges for brick alone and bricklaying was nearly $1,200. I believe the exact amount was $1,170. There was also an angle on the west end of the row which caused us to enlarge the two west houses, which increased the cost of the houses also. And owing to the fact that we had to start in on low ground we were compelled to put cellars under these houses. The net result of that whole move insisted on by Mr. Daniel was to increase the whole cost of the houses about $1,500. With that extra charge eliminated the cost of the houses was actually below the estimate.

Q. What part did Mr. Daniel take in the supervision of the construction of these houses? A. Mr. Daniel had his say about everything, just as he had about the location of this row of houses. He generally had the last say, and no step was taken without consulting him. He was actually present when some of the contracts were let, for instance, when the mantels were bought and when the painting contract was let.

80 Q. What part of this property was more available for warehouse purposes, should the railroad extension make that desirable? A. The part that Mr. Daniel located this second row of houses in, the part south of the street railroad track.

Q. Why was that location used for residences instead of reserving it for warehouses?

Mr. SIDDONS: Question objected to because it is not in evidence here that they contemplated the erection of any warehouses. It is not a part of the contract.

A. The row was located on the south side of the street car track for the reason that at that time we didn't have any idea except a nebulous idea of the value of the property for railroad purposes.

Q. As nearly as you can do so, give the date when it became known to Mr. Daniel and yourself that the railroad plans were such as to make warehouses or business structures desirable in that locality. A. Well, we were finally waked up on that subject about the time Mr. Ross, of Barber & Ross, bought his large frontage there for warehouses.

Q. Can you give the date of that approximately? A. I think that was during the summer or spring of 1903—the summer of 1903. I am not sure of the date. Before that we went ahead on the theory of building residences on that property and nothing else.

Q. What was the plan prior to the Ross purchase, at any rate, as to the property bordering on the railroad, as to character of improvements, whether residences or warehouses? A. Mr. Daniel and I had a map made by the assistant——

Q. Is that map in evidence. A. Yes. Mr. Daniel and I had a map made by an assistant in the Surveyor's office, which map has been placed in evidence by him, and an examination of that map would show that the whole railroad frontage was used for building lots, showing that at that time we contemplated nothing more than the erection of houses on the railroad frontage.

Q. After the railroad situation had been defined, as you have testified, were there any conferences between you and Mr. Daniel on the subject of the use to be made of the property in view of the railroad situation?

Mr. SIDDONS: I object to the question on the ground that it deals with events subsequent to the execution of the contract.

A. Yes, sir; a number of conferences. After the purchase of the Ross ground the idea then took possession of both of us that this property would be available for warehouses similar to those that were to be constructed by Barber & Ross. And Mr. Daniel drew off plans—in fact both of us did—showing how the ground could be used for that purpose advantageously. And after that our ideas of the proper uses of the ground entirely changed, and we no longer contemplated the erection of houses on it.

Q. What did the new use contemplated include as to the method of utilizing the property? A. It included the railroad front-
81 age and the ground immediately west of the railroad frontage—the best part of the ground.

Q. Did that method of improvement contemplate participation by Mr. Daniel and Mr. Redman and yourself? A. No, sir. Mr. Daniel suggested the idea that it would be well to get rid of Mr. Redman, that he was weak financially for an enterprise of this kind, and he suggested that we organize a company. I don't know which one suggested it, that we organize a company to take over this ground, and sell the Redman interest out to new parties, get more fresh capital in and go into the warehouse business, for the erection of warehouses on this ground south of the street car track.

Q. Did Mr. Daniel name any price at which the Redman interest could be purchased? A. Yes. He asked me to speak to Mr. Redman as to what Mr. Redman would take for the railroad frontage and the ground west of it, about 160,000 feet out of the heart of the property. Mr. Redman told me in the presence of Mr. Daniel that he would take 15c. a foot.

Mr. SIDDONS: All this testimony is objected to as plainly irrelevant and immaterial. The contemplated changes in the method of executing the contract were never carried out by the parties, and I move to strike the answer of the witness out.

Q. Did Mr. Daniel report to you any efforts made by him to sell the Redman interest, and, if so, what did he report? A. Yes, sir; he reported that he was trying to sell the Redman interest to three or four people at an advance of fifteen cents a foot.

Mr. SIDDONS: Let it be understood that my objection goes to all this line of interrogation and responses.

Mr. RIDOUT: Yes.

Q. Did he name the persons to whom he made efforts to sell? A. Yes. He told me he was trying to sell to Mr. Thomas R. Riley, the lumber man, Mr. McLeran, of Heiskell and McLeran, and J. Nota McGill.

Q. Do you know whether Mr. Daniel prepared any prospectus for the proposed warehouse company in connection with this modified enterprise? A. He asked me to prepare one and kept at me for about six weeks. I finally prepared one.

Q. Were any of Mr. Daniel's reports to you as to the progress of his negotiations concerning the Redman interest, in writing? A. Yes, sir.

Q. I wish you would produce any letters you have on that subject? (Witness hands papers to his counsel.)

Q. I hand you a letter dated August 11th, 1903, and ask you to state whose signature that is? (Handing letter to witness.) A. Mr. Daniel's.

Mr. RIDOUT: I offer that letter in evidence, to be marked Exhibit Defendant No. 4, and I am going to ask Mr. Campbell to read a passage from it.

Mr. SIDDONS: I object to that letter on the ground that the passage to be read from it I suppose relates to a contemplated plan
82 which was never carried out and has no bearing upon the controversy in suit here.

Q. Now, I will ask you to read the passage referring to the proposed sale of the Redman interest.

Mr. SIDDONS: I object to that. The letter is in evidence and the passage speaks for itself.

A. (Reading:) "August 11th, 1903. I took up the storage warehouse deal with McLeran yesterday * * * McGill is away for two weeks on his vacation * * * Everything being done by

the railroads are benefiting our Eckington property and I have new inquiries as to railroad frontage on our property."

Mr. SIDDONS: I move to strike out the answer of the witness as an attempt on his part to interpret the letter. The letter must speak for itself.

Q. I hand you a letter dated August 12th, 1903, and I will ask you to state whose signature is appended to it. (Handing letter to witness.) A. The signature is Mr. Daniel's.

(Letter handed to counsel for complainants.)

Mr. RIDOUT: I offer this letter in evidence to be marked Exhibit Defendant No. 5.

Mr. SIDDONS: Objected to on the same ground as I objected to the previous letter offered in evidence.

Q. Read such parts of that letter as refer to the proposed sale of the Redman interest. A. (Reading:) "August 12th, 1903. McLeran is still working on his end of the line. I called on Thomas R. Riley today and told him that if he could not swing the one-third, we would like to have him in the enterprise even if he took a smaller interest. And this would put him in position as a director of the company to increase his holdings later. This idea seemed to take him, and he said he would reconsider the proposition on this line, as he believed in it, and would like to go in with you and myself.

Q. I hand you a letter dated August 20th, 1903, and ask you to state whose signature is that. (Handing letter to witness.) A. Mr. Daniel's signature.

Mr. RIDOUT: I offer this letter in evidence to be marked Exhibit Defendant No. 6.

Mr. SIDDONS: Objected to on the same grounds.

Q. Read the parts of that letter of August 20th, referring to the Redman interest. A. (Reading:) "I am still working on McLeran and Riley. McLeran is busy every day on the testimony before condemnation committee. I tried to accommodate Mr. Riley's situation yesterday by submitting an amended proposition, which is now being earnestly considered by him. * * * I think it important to utilize the next sixty days for all it is worth."

Q. I hand you a letter dated August 21st, 1903, and ask you to state whose signature is attached to it? (Handing paper to
83 witness.) A. Mr. Daniel's signature.

Mr. RIDOUT: I offer this letter in evidence to be marked Exhibit Defendant No. 7.

Mr. SIDDONS: I make the same objection.

Q. Read the expressions from that letter that refer to the Redman interest. A. (Reading:) It occurred to me that Riley was the best man we could have associated with us in the warehouse deal in order to insure its success owing to the extensive business experience he has had. I told him early in the week that sooner than have him miss the opportunity I would try and secure the third interest for

him part cash and balance to be secured by deed of trust on this one-third to be turned into our company. If Thomas R. Riley gives a trust secured upon this one-third and evidenced by his deed of trust notes, I think I can use the notes in the National Safe Deposit and Trust Company for Mrs. Franz. The cash payment would help us out and I think we could use the trust notes as well. I have just returned from the third interview I have had with him this week. He said he was perfectly satisfied with the proposition and that it was only a question of the cash * * * He was very complimentary to us both and said he would like to be in business with us as he thought we both had good judgment— * * * We have a good thing but should take no chances at this time.

Q. I hand you a letter dated August 24th, 1903, and ask you to state whose signature is attached to it? (Handing paper to witness.) A. Mr. Daniel's signature.

Mr. RIDOUT: I offer this letter in evidence to be marked Exhibit Defendant No. 8.

Mr. SIDDONS: Same objection.

Q. Read the expressions from that which refer to the Redman interest. A. (Reading:) "I think Riley is going in with us * * * I think he wants to see you before going in. * * * McLeran is waiting for McGill to return, and the jury's award in the condemnation proceedings. McGill will be back this week."

Q. I hand you a letter dated August 25th, 1903, and ask you to state whose signature is attached to it. (Handing paper to witness.) A. Mr. Daniel's.

Mr. RIDOUT: I offer this paper in evidence to be marked Exhibit Defendant No. 9.

Mr. SIDDONS: Same objection.

Q. Read the expressions in that letter referring to the Redman interest. A. (Reading.) "I saw Mr. Riley again this morning and he says the banking situation is getting better and that he was so informed by his banking people. * * * and that he thought of paying all cash for the interest in the railroad frontage. Also saw McLeran this morning and he said the testimony before the commission would be completed this week."

Q. The letter of August 25th refers to the railroad frontage. How did that frontage compare with the other part of the
84 property as to value? A. Well, it was the best part of the property; it was very much the best.

Q. What was the area of what was known as the railroad frontage. A. About 160,000 feet.

Q. Is this the property in respect of which Redman offered to accept fifteen cents a foot, in the presence of Mr. Daniel? A. Yes, sir.

Q. In your conferences with Mr. Daniel, were any terms stated by him as to the proposed warehouse deal?

Mr. SIDDONS: That question is objected to as immaterial and irrelevant.

A. Yes. Mr. Daniel told me his ideas about it, and as it was rather an involved idea and I did not get it very clearly, I asked him to dictate his idea to me and I would put it down in writing so I could refer to it any time I wanted to.

Q. Have you that paper? A. Yes, sir.

Q. I wish you would produce it.

(Witness hands paper to his counsel.)

Q. Was this paper written in the presence of Mr. Daniel? A. Yes, sir; dictated by him.

Mr. RIDOUT: I offer this paper in evidence to be marked Exhibit Defendant No. 10.

By Mr. SIDDONS:

Q. Did you say, Mr. Campbell, that that was dictated to you by Mr. Daniel? A. Yes, sir.

Q. After you had written it, did you show it to him? A. After I wrote it?

Q. Yes. Did you show it to him? A. I read it to him.

Q. You never showed it to him? A. I read it to him and it was approved by him.

Mr. SIDDONS: The paper is objected to on the ground that it is irrevelant and immaterial, and it is objected to on the further ground that Mr. Daniel who, the witness testified, dictated that paper to him, never saw it after it was dictated.

By Mr. RIDOUT:

Q. When was this paper dictated to you, as nearly as you can remember? A. It was dictated in the latter part of the summer of 1903.

Q. Was it before or after the prospectus was written? A. Before the prospectus was written.

Whereupon an adjournment was taken to meet at the same place on Friday, January 6th 1905 at 7.30 o'clock P. M.

FRIDAY, *January 6th*, 1905.

The session of testimony to be taken on Friday, January 6th 1905 at 7.30 o'clock P. M. was adjourned by agreement of counsel, to meet on Monday, December 9th, 1905, at 7.30 o'clock P. M., at the same place.

MONDAY, *December 9th*, 1905—7.30 o'clock p. m.

85 Met pursuant to agreement of counsel at the same place on Monday, December 9th, 1905.

Present: Same counsel.

Whereupon CHARLES M. CAMPBELL resumes the stand.

Mr. RIDOUT: Mr. Siddons, have you been able to find the letter, the production of which was requested at a former session on page 12 of the testimony of the defendant?

Mr. SIDDONS: Mr. Daniel informs me that he has made a search for the letter in question and cannot find it.

By Mr. RIDOUT:

Q. Mr. Campbell, state the contents of your letter written to Mr. Daniel when he was in New London a few days prior to August 19th, 1902? A. I don't know how many days it was prior to this answer, but I wrote Mr. Daniel particularly in regard to the matter of my putting up all the money for this proposed enterprise, as I had done in the case of the Sanitary Dwellings Company. And I told him I could not do it, if that was the proposition. In reply to that letter he wrote me under date of August 19th, 1902, from New London, Connecticut.

Mr. SIDDONS: Question and answer objected to on the ground that they deal with mere negotiations for a contract which was made and is in evidence.

Q. To what language in Mr. Daniel's letter of the 19th of August, 1902, do you refer as replying to the letter, the contents of which you have just given?

Mr. SIDDONS: I object to that as asking the witness' interpretation of Mr. Daniel's letter, which is in evidence and speaks for itself.

A. (Reading from letter:) "I of course agree with you in reference to your not being expected to spend more of your individual money."

Q. Mr. Campbell, I wish to call your attention to your testimony at a previous session in respect to the sum of $4,150, occurring at page 19 of the first session of this testimony, and ask you to state whether that $4,150 included any part of the proceeds of the loan? A. Yes; it included the first payment.

Q. What was the sum paid out of your private funds in addition to the proceeds of the first installment of the loan? A. Can I refer to a memorandum?

Q. You can refresh your memory but it ought to be your independent recollection? A. Including the Sanitary Dwellings Company.

Q. Excluding the Sanitary Dwellings Company. A. Excluding the Sanitary Dwellings Company's payments: $1,650.

Q. What was the amount paid for the Sanitary Improvement Company? A. $481.

Q. Testimony has been given concerning what was called in the testimony a statement of account rendered by you. Please
86 state what that paper was.

Mr. SIDDONS: I object. The paper itself is in evidence.

Q. I will put it this way: State what the purpose of that paper was?

Mr. SIDDONS: I object to that. The paper speaks for itself and is in evidence.

A. That paper was a list of checks. It had no statement on the

first page that it was an account and was not intended as an account, and when it was laid down on Mr. Daniel's desk it was distinctly stated to be a list of checks. And a duplicate entry was pointed out to him, and is the same duplicate that he has mentioned and his brother has mentioned, and the only duplicate he has mentioned, to-wit, the check for $500 on June 16th or 17th, I think. When that money was paid to Mrs. Franz the check was drawn to Mr. Daniel and Mr. Daniel paid it over to Mrs. Franz or the trust company. And in making up a list of checks I thought it was better to make a complete list of them, although I thought that was a duplicate I was credited for the Franz payment by the F. H. Smith Company or the trust company. At that time I was not sure but I called his attention to it as a probable error, and I also called his attention to one or two other entries which were probably errors. The intention was for us to get together——

Mr. SIDDONS: Now, I object to the statement of the witness' intention.

A. (continued). —with this list of checks as a basis and state the account between us. At that time we were very friendly with no hint of impending trouble.

Q. At the time of the Malnatti transaction, what sum did you notify Mr. Daniel you claimed as due to you for excess of payment? A. I told him, about $4,000.

Q. And what claim did you make in respect to the payment of that sum out of the Malnatti sale? A. I told him that I advanced the money for the Sanitary Dwellings Company with the distinct understanding, both verbal and written, that it would be paid to me out of the first sale of land belonging to the company; and that this was the first sale of land and that that money ought to be repaid. And in addition to that I had advanced various sums towards the construction of these houses and that I thought the contract distinctly called for a recognition of those payments and an adjustment of them at that time. I called his attention particularly to paragraph 6 of the contract dated October 23rd, 1902.

Q. Mr. Campbell, have you that paper of June 19th, 1902 which was requested to be produced and, if so, I wish you would produce it.

(Witness produces paper called for by his counsel.)

Q. Is that Mr. Daniel's signature and yours? (Handing paper to witness.) A. Yes.

87 (Paper handed to counsel for complainants.)

Mr. SIDDONS: The paper dated June 19th, 1902, called for by the complainants when they were taking their testimony, is now produced by the defendant, and is offered in evidence by the complainants, to be marked Exhibit Complainant No. 1.

Q. Mr. Campbell, I call your attention to the following language written by a pen on the paper which has just been offered, as follows: "All moneys advanced by said Campbell in handling the property in question shall be returned" returned is repeated "returned to him

out of first sales," and I will ask you to state in whose handwriting that is. A. (Examining paper.) Mr. Daniels's.

Q. Do you remember whether you saw him write it or not? A. Yes, I saw him write it.

Q. At the time of writing those words, did Mr. Daniel make any statement concerning them? A. Yes, sir. He told me that what was written in that contract was not strong enough, and he erased it and wrote in what he did with the pen. And he said, "Mr. Campbell, I used the phrase 'handling the property in question' because it is a very broad phrase and will cover any possible situation so that you will be sure to have your money returned to you."

Q. If you know, state why that paper was not signed by Mr. Redman? A. The paper was not signed by Mr. Redman because of my negligence in not going after him. Sometimes I did not see Mr. Redman for two months.

Q. Did you ever present this paper to Mr. Redman and he refuse to sign it? A. I presented the paper after this dispute arose, and he then refused to sign it without consulting Mr. Daniel.

Q. To what dispute do you refer? A. To the dispute ending in this suit.

By Mr. SIDDONS:

Q. Was that after the bill was filed or before the bill was filed? Can't you give us approximately when it was? A. I can't give you the exact date.

Q. I say approximately? A. I think it was after the Malnatti sale.

Q. You mean after the contract had been made or after the Malnatti sale had been consummated? A. No; after the contract had been made.

By Mr. RIDOUT:

Q. Did Mr. Redman ever make any statement to you concerning the authority of Mr. Daniel to act for him and, if so, what was it and when? A. Yes, he told me on several occasions that Mr. Daniel acted for him. He told me on this occasion when I presented this paper for him to sign that he would be guided entirely by what Mr. Daniel told him. And when I went back afterwards and asked him if he proposed to attach his signature, he said no, that Mr. Daniel had advised him not to do it. I very seldom saw Mr. Redman, and he always gave me to understand that Mr. Daniel acted for him.

88 Q. When the contract of October 23rd, 1902, was signed, had you any information concerning the arrears of taxes due upon the property? A. No, sir.

Q. When did you first learn what the amount of unpaid taxes was? A. I cannot recall the exact date, but it was after the application for the loan, I think.

Q. When did you first learn how the balance of $32,500 due Mrs. Franz was made up in respect of principal and interest, approximately? A. Well, I was always under the impression——

Mr. SIDDONS: Now, I object to the witness stating impressions.

A. I understood from Mr. Daniel——

(Question repeated to the witness.)

A. I found it out after the loans were negotiated.

Q. What amount, as nearly as you can state it, represented interest? A. Well, I think several thousand dollars represented interest.

Q. Did Mr. Daniel ever tell you that the deed to Mrs. Franz had been delivered to her or to the trust company, for this property? A. Yes, sir.

Q. What statement, if any, did he make concerning the effect of the delivery of that deed on possible foreclosure? A. He told me that as a reason why Mrs. Franz would not foreclose on us, he thought, while we were engaged in this enterprise. And also the payment to her of the $500, which had been furnished by me, was an additional reason.

Q. Did Mr. Daniel make any statement to you concerning what effect the agreement or guarantee, which you joined him in executing, would have in superceding the deed? A. No, sir, I don't remember that he did.

Q. Were you advised by the trust company or by any representative of the trust company, in his presence as to the effect of this guarantee upon the deed? A. The trust company so advised me, but I don't believe Mr. Daniel was present.

Mr. SIDDONS: I object, and I move that the response of the witness be stricken out.

Q. What was the character of that land at the time of the agreement of October 19th, 1902, as to being sub-divided and ready for building, or as to being agricultural land? A. There had been a speculative sub-division made, but it never had become a matter of record. The land was agricultural land and still was being farmed on the part below the street car tracks—the part south of the street car tracks.

Q. What part, if any, did Mr. Redman take in the management of the property? A. We took no part whatever. I never knew him to even make a suggestion.

Q. Mr. Campbell, on page 7 of Mr. Daniel's testimony he gives the history of the transactions concerning a discount of a $2,000 note, the date of which transaction he gives as March 23rd, 1902. Mr. Daniel states that you then introduced him to cashier
89 Moore. Please state what that transaction was. A. Mr. Moore was not the cashier of that bank, but the vice-president. He came into the bank when the West End Bank and the Citizens' Bank were consolidated in March, 1903, I believe. He was not there in March, 1902, consequently the conversation that Mr. Daniel states, did not take place. I never introduced him as a cousin of Senator Daniel. He is not the first cousin of Senator Daniel. I understand he is not even a second cousin, but a third cousin.

Mr. SIDDONS: I now move to strike out the testimony of the wit-

ness, at least so much of it as in which the witness undertakes to give his understanding.

A. (continued). Such a note was not discussed on that occasion.

Q. Was any $2,000 note ever discounted, on which Mr. Daniel was a party? If so, by what bank, when and for what purpose? A. I needed $2,000 for my own personal use in September 1902, and I got the money from Mr. Johnson, a friend of mine, who was president of the old Citizens Bank, without any intercession on the part of Mr. Daniel whatsoever. That note would have been discounted with anybody's name upon it.

Q. Who paid that note when it matured? A. I paid it.

Q. Did it have any connection and, if so, what, with the Northwest Eckington Property? A. It had no connection whatever with the Northwest Eckington property. The money was paid out for my own private uses the next day, I believe to the Standard Brick Company.

Q. On page 40 of Mr. Daniel's testimony he says that you credited yourself in the list of checks with a good many notes for building material signed by Daniel and Redman, as cash paid out by you. Explain those credits. A. Whenever any notes were signed by Daniel and Redman they were always signed by me. And when such notes were given for building material and I met the notes when they matured or curtailed them, I took credit for the amount of the payments I made.

Q. Did you in any case take credit for a note which you did not pay? A. No, sir.

Q. On the same page, 40, he says there was something like $750 charged to Cowell, which Cowell never received. What is the fact about that? A. The amount was not $750, as stated by Mr. Daniel, but $450. Mr. Cowell never said he did not receive it. He acknowledged having received it, but credited it to the wrong account.

Mr. SIDDONS: I object to so much of the statement of the witness as undertakes to give what Mr. Cowell is alleged to have stated.

Q. On page 72 of Mr. Daniel's testimony, in response to the question whether you had ever paid any money out of your own pocket on account of interest on the deed of trust, or any part of the principal, Mr. Daniel answered, "Not one dollar." What is your recollection on that subject? A. I paid $500 on June 16th, 1902, on the trust.

Whereupon an adjournment was taken to meet at the same place on Wednesday, January 11th, 1905, at 7.30 o'clock P. M.

90 THURSDAY, *March 16th*, 1905—7.30 o'clock p. m.

Met, at the same place, on Thursday, March 16th, 1905 at 7.30 o'clock P. M., by agreement of counsel, to continue the taking of depositions on behalf of the defendant in the above entitled cause.

Present: Same counsel, and parties.

Whereupon WILLIAM D. HOOVER was produced as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

Direct examination.

By Mr. RIDOUT:

Q. Please state your full name? A. William D. Hoover.

Q. What is your relation to the National Safe Deposit, Savings and Trust Company of the District of Columbia? A. I am the trust officer of that institution.

Q. I asked you to inform yourself from the records of that company of the condition of the account between the Northwest Eckington Improvement Company, represented by Mr. Daniels and Mrs. Franz, in respect of the purchase money trust on the Northwest Eckington tract. Have you done so? A. I have.

Q. I wish you would state what the balance due on that trust was December 2nd, 1902?

By Mr. SIDDONS:

Q. Mr. Hoover, your information has been gleaned from the books, I suppose? A. And from a personal inspection of the notes.

Q. From the books and records there? A. Yes.

Q. Have you made a transcript of the records? A. No, I simply informed myself as to some of the details.

Mr. SIDDONS: I object to the question on the ground that the attempt is made by it to have the witness testify as to the contents of books and records under his custody and control, or available to him, and that that is not competent testimony. But counsel for the complainants states that if the full transcript of the records appealed to by the question is made and produced, and Mr. Hoover states that it is a copy, no question will be made as to its accuracy.

(The preceding question read as follows:)

Q. I wish you would state what the balance due on that trust was December 2nd, 1902? A. The amount of principal then due I find from an inspection of the notes to be $25,911.92.

Q. And how much for interest? A. The total amount due at that time as we figured it at the time by making the agreement of December 2nd, including interest, was $32,938.66.

Q. Now, if anything was done in the nature of a correction of the balance later, on or about December 12th, state it.

Mr. SIDDONS: It is understood that my objection goes to this line of interrogation.

Mr. RIDOUT: Certainly.

91 A. Shortly after this agreement was made Mr. Daniel stated that he and Mr. Howard had made some calculation as to the amount due during the preceding summer, and as of date, December 12th, 1902 it was agreed that the amount of principal and interest due June 16th, 1902, was $32,500, and that a payment

on account of principal was made on that date of $500., leaving a balance then due of $32,000.

Q. How much of that, according to the records as you have examined them, was principal and how much interest? A. The amount of principal was $25,911.92.

Q. And the difference is interest? A. The difference represented the interest.

Q. On page 52 of his testimony, Mr. Daniel testifies that the trust company was under the misapprehension that interest was due on the incumbrance. Does your explanation of the records and books of the company indicate that there was any misapprehension on the part of the trust company in that regard as to there being interest overdue? A. No. The note shows that the interest was due at that time.

Q. Mr. Daniel, on page 52 of his testimony is asked this question, "Is it not a fact that the trust company representing Mr. Franz, was at that time pressing very vigorously for the payment of the note?" And his answer is "They were under the misapprehension that there was interest due on it." I desire to know from you whether the records of the company show that at that time the impression of the company that interest was due, was a misapprehension or not? A. No. Interest was due.

Q. Mr. Hoover, were you familiar with the history of the execution of the guarantee, that paper of December 2nd, 1902? Were you connected with the company then? A. I was.

Q. Do you remember the circumstances surrounding the execution of that paper? A. I remember that this was the result of a long series of efforts to get the matter settled, and it was finally brought into concrete shape by this instrument.

Q. What was the attitude of the company as representing Mrs. Franz at that time, in respect of insisting upon a settlement of the overdue principal and interest.

Mr. SIDDONS: Question objected to, as all conversations and negotiations leading up to and preceding the execution of the agreement of December 2nd, are immaterial, irrelevant and incompetent. Settlement was made by that agreement.

A. Mrs. Franz had repeatedly directed the company to——

Mr. SIDDONS: I object to the witness testifying to any statement in writing or verbally made by Mrs. Franz to him or to any other officer of the trust company, as plainly incompetent testimony.

A. Mrs. Franz had repeatedly directed the company to insist upon payment of the overdue interest, and in compliance with her directions a number of letters were written to Mr. Daniel requesting and demanding a settlement of the overdue interest.

Mr. RIDOUT: I request counsel for Mr. Daniel to produce all letters that Mr. Daniel received from the trust company.

92 Mr. SIDDONS: You will have to indicate what letters you want.

Mr. RIDOUT: I want all the letters he ever received from the

trust company demanding settlement of that debt, and especially any letters written during the year, 1902.

Q. At whose instance was this paper of December 2nd, 1902, prepared; Mr. Daniel's or the trust company's?

Mr. SIDDONS: Question is objected to as immaterial, irrelevant and incompetent.

A. It was prepared, as I remember it, at the request of Mr. Daniel.

Q. My question is addressed to elicit this information, whether the procurement of this paper was volunteered by Mr. Daniel independent of any urgency on the part of the company in respect to collecting the debt, or whether it was submitted by him or offered by him in satisfaction of the demand of the company that the debt be settled?

Mr. SIDDONS: Question objected to for the reasons stated in the objection to the preceding question and on the further ground that the question is leading.

A. As I stated before in answer to another question, this agreement was prepared as a result of a number of conferences, and as a means——

Q. Conferences between whom? A. Between Mr. Daniel on the one side with the company, and Mrs. Franz on the other side with the company, as a means of bringing the entire matter into a concrete form.

Q. You have spoken of directions and instructions given the company by Mrs. Franz in respect to collecting this debt. Were those instructions communicated to Mr. Daniel? A. They were.

Q. Testimony has been given in this case concerning what has been called in the testimony, a deed given by the Northwest Eckington Improvement Company to Mrs. Franz. Did you ever see that paper? A. I saw it.

Q. Do you know where it is now? A. I do not.

Mr. RIDOUT: Mr. Siddons, if that deed is in the possession of Mr. Daniel, I call upon you to produce it.

Mr. SIDDONS: I don't know what deed you are referring to.

Mr. RIDOUT: Your client knows. It is a deed from the Northwest Eckington Improvement Company professedly conveying the property to Mrs. Franz absolutely, but I am informed that it is in fact a conveyance to her in trust for the contributors of the purchase money for the land.

Q. Do you know when that deed left the custody of the trust company? A. My recollection is indistinct as to that. I made an effort to find it this afternoon.

Q. And I presume you don't know who got it? A. I do not.

Mr. RIDOUT: Mr. Siddons, I have copies of two letters, which Mr. Hoover has verified, from the records of the company, as letters sent by the company to Mr. Daniel, calling upon him for
93 payment of this debt. I will show these to Mr. Daniel and let him say whether he has the originals or not. Unless Mr.

Daniel has reason to suppose that he has the originals I will prove these as secondary evidence.

Mr. SIDDONS (having examined papers): Subject to a comparison with the original if found, you can use these.

Q. Is that a copy of one of the letters written to Mr. Daniel? (Handing paper to witness.) A. Yes.

Mr. RIDOUT: I offer this in evidence to be marked Exhibit W. B. H. No. 1.

Mr. SIDDONS: That letter, of course, is objected to as immaterial and irrelevant and as long antedating the agreement in controversy here.

Q. Mr. Hoover, how is this account, the account concerning the Mrs. Franz-Daniel trust, recorded in your office? Is it in one concrete entry in some one book or is it spread over a number of papers and books? A. The original entries are all made on the backs of the notes.

Q. So, a copy of the notes, or a copy of the aggregate payments of interest on the backs, would present the matter so far as mathematics would enlighten it? A. Yes.

Q. Will you have a copy of the notes and the entries made so that we may file them later in the case? A. Yes.

Cross-examination.

By Mr. SIDDONS:

Q. Besides the two letters that Mr. Ridout has referred to as having been sent by the company to Mr. Daniel, are there any others? A. There are some others, yes.

Mr. RIDOUT: It is understood that you will bring carbon copies of all you will find.

The WITNESS: I will send you copies from the letter books in which they have been copied.

Q. Mr. Hoover, when did the negotiations and conferences to which you have referred, begin, which resulted in the execution of what has been called a guarantee by Mr. Ridout? A. I should imagine, Mr. Siddons, that they began some six months prior to the execution of the paper.

Q. Some six months prior to the execution of the paper. A. I should say so.

Q. And with whom were those negotiations conducted? A. Do you mean on the part of the company or on the part of the——

Q. Between whom, perhaps would be the more accurate way to put it. A. Sometimes Mrs. Franz would call and would see myself or Mr. Jones, the president, and Mr. Daniel would call and either see me or Mr. Jones in the same way.

94 Q. Did Mr. Campbell take any part in those negotiations? A. Not so far as our company was concerned.

Q. Did he ever call to see you respecting the matter? A. Not that I recollect.

Mr. RIDOUT: Question objected to as too indefinite. It should be limited to some definite time.

Q. Of course my question is directed to the negotiations of which we are speaking. So far as you know Mr. Campbell never took any part in those? A. Not so far as I know.

Q. And never interviewed, so far as you know, the officers of the company concerning the matter? A. So far as I know.

Q. You, as trust officer, had those negotiations in hand, did you not? A. Yes.

Q. And as a part of the duties of your office, you would be the officer on behalf of the company to conduct such negotiations? A. Yes.

Q. There has been a letter introduced in evidence, which unfortunately is not here tonight, from the company to Mr. Daniel—— A. I think I have a copy of that here.

Mr. SIDDONS: Please let me see it.

A. (Letter handed to Mr. Siddons.) I think that is the letter you referred to.

Q. I understood you to say, Mr. Hoover, that at the time of the execution of this agreement on December 2nd, 1902, there was interest due and in arrears to the company. Is that correct? A. Yes.

Q. And when was that interest paid? A. When was it paid?

Q. Yes. A. It never has been paid.

Q. Then, there has been overdue interest from that time to the present? A. It forms now, by reason of the agreement which I mentioned as being attached to the notes at present, a part of the principal.

Q. That agreement, attached to the notes, by the terms of which the past due interest was made a part of the principal, was made when? A. On the 12th of December, 1902. I have a copy of that if you care to look at it. (Handing paper to counsel.)

Q. Mr. Hoover, prior to the execution of this private agreement which you referred to, there was a settlement of the question of the amount of principal and interest due on this Franz trust in the previous summer, had there not been? A. Apparently, but that seems to have been lost sight of when we made up the agreement of December 2nd, in which that amount was inserted as somewhat in excess of the amount in the agreement of December 12th.

Q. Why do you say, apparently? A. There was no record of it.

Q. Isn't it a fact that there was an agreement reached in the summer between Mr. Daniel on the one hand and Mr. Howard, an officer of your company, on the other? A. It seems to have been so. As I say, there was no record of it, and whatever agreement was made it was entirely lost sight of when he made the

95 agreement of December 12th. Mr. Daniel subsequently to that apparently remembered something about it, or found some memoranda in his office about it, saw Mr. Howard and probably brought it to his attention clearly, and he clearly remembered it.

Q. And the company recognized the agreement that had been thus effected between Mr. Howard and Mr. Daniel the previous

summer? A. Yes, it was recognized as an agreement made as of June 16th, as I recollect it.

Q. June 16th, 1902? A. Yes.

Q. So that, with that agreement in view and in mind, on December 2nd, 1902, there was not in fact any principal or interest due and payable to the company on behalf of this Franz trust? A. As I say, Mr. Siddons, we had not that agreement in mind. It had been lost sight of at the time.

Q. I understand that. But having recognized that agreement made in the summer between Mr. Daniel and Mr. Howard, which, as I now understand you, was to take effect as of June 16th, 1902, there was not in December, 1902, any principal or interest due and payable? A. Yes, there would be. It we came down to a technical point, those notes are dated——

Q. Perhaps I don't make myself entirely clear. A. You make yourself entirely clear. Those notes are dated, as I recall it, January 28th, 1891, so that on July 28th, 1902, interest would become due.

Q. Ordinarily? A. Yes.

Q. On account of the debt on the notes? A. Yes.

Q. By the provision in them calling I suppose for semi-annual interest? A. Yes.

Q. Granting that, the effect of the agreement made in the summer was to treat the obligation owned by Mrs. Franz as not due and payable, and it did not become due and payable, did it, under the modification represented by this agreement, until some time after December, 1902?

Mr. RIDOUT: Objected to because no such agreement has been definitely proved. It has only *be* alluded to in an indefinite way, and there is nothing on the record to show that there was anything but an adjustment of interest, whereby a payment of $500 made by Mr. Daniel on June 16th, 1902, was allowed to him on December 12th, 1902. There was no agreement between him and Howard that the $32,000 overdue indebtedness should be treated as not due, and any such agreement would be void as without consideration.

Q. I withdraw the question I put to Mr. Hoover. Mr. Hoover, are you familiar with the arrangement that had been made between Mr. Daniel and Mr. Howard on behalf of the trust company? A. Do you mean at the time of this agreement of December 2nd?

Q. No, no. A. At the present time?

Q. No, no. A. The agreement of June?

Q. What I want to know is,—— A. Do you mean, am I familiar with it now or was I at the time of the agreement?

96 Q. You can tell me both. A. I was not familiar at all with any such agreement when it was made.

Q. In June? A. Yes.

Q. How about the present time? A. I only know of the agreement from the fact that I prepared that short agreement, dated December 12th, 1902, in which that agreement of June was referred to.

Q. And you don't know, then, what the nature of the agreement

made in June, 1902, was, except that there was some agreement made. A. I know this, that there was no paper writing in regard to it. It was simply the result of a conversation which they had, and some figuring.

Q. Was there not, in June, 1902, quite a question arising, Mr. Hoover, as to what had been paid upon the account of the Franz note to Mr. Franz in his lifetime? A. Not to my knowledge, Mr. Siddons. There was a question from time to time as to what was the aggregate amount of interest due on the note, and that was the sole occasion for the agreement of December in fixing that amount.

By Mr. RIDOUT:

Q. December 12th, you mean? A. December 12th.

By Mr. SIDDONS:

Q. Do you remember, Mr. Hoover, that payments had been made to Mr. Franz for which lots were released from the Franz trust, and that due credit had not been given for payments so made, and allowed by Mr. Howard afterwards? A. I don't remember that circumstances, Mr. Siddons. I know that certain lots were released.

Q. And you don't know anything about these payments made? A. I do not.

Q. For the release of such lots, for which credit had not at that time, in 1902, been given? A. No, but as I stated, such credits would have been merely a question of principal, and not interest; but as to the——

Q. And you don't know yourself of any of the details? A. I do not. Whatever they were they transpired before I came with the trust company.

Q. Was there any payment made to the trust company in July, 1902 on account of interest? A. I am not sure as to that. My impression is that a payment was made in June of that year, but I have no distinct recollection as to it.

Q. After the execution of the memorandum agreement of December 12th, 1902, or prior to that, and after June 16th, 1902, did any installment of interest in fact become due? A. Between what dates?

Q. June 16th, 1902 and December 2nd, 1902. A. Yes, an installment became due July 28th.

Q. And that was past due on December 2nd? A. That was past due.

Q. And did that remain past due on December 12th? Was that still past due on December 12th? A. It became a part of the sum agreed upon on December 12th as of June 16th.

97 Q. You mean that on December 12th it was treated as the sum agreed upon to be due as of June 16th, the previous June; not payable but due—part of the indebtedness due?

Mr. RIDOUT: I object to that because the witness has never stated, but on the contrary has denied, that there ever was a time when this indebtedness was treated as not due; it all, upon its terms, being treated as long overdue, as appears upon the face of the record.

Q. When was the first installment of interest paid on account of

this Franz trust after that agreement of December 12th? A. I don't remember, Mr. Siddons.

Q. Do you remember when the trust company called for a payment of the interest after that time? A. I do not.

Q. Do you remember if they ever did? A. Yes, they have called for a payment since then.

Q. Can you approximate the time when that was, Mr. Hoover? A. My recollection is it was in September, 1904.

Q. September 1904? A. Yes. I was out of the city then, but I saw the letter I think that was sent.

Q. After this agreement of December 12th, 1902, was made, which relates back and refers to the agreement of June, 1902, the trust company was not calling for or demanding payment of either principal or interest on this trust until September, 1904, was it, Mr. Hoover? A. I would not like to say as to that Mr. Siddons. I don't really recollect.

Q. Why? A. Because I don't really recollect.

Q. Now, on December 2nd, 1902, which is the date of this so-called guarantee agreement, and again on December 12th, 1902, the date of that memorandum agreement, the trust company in fact had in its hands money which it regarded as belonging to Mr. Daniel, and which, a few days later, on December 17th, 1902, it turned back to him, did it not? A. Yes.

Q. Then from June 16th, 1902, up to and including December 17th, 1902, there was, as a matter of fact no payment due and payable to the trust company, in the light, of course, of the agreement that you have referred to as being made?

Mr. RIDOUT: Objected to, as no such agreement has been testified to by anybody yet, it being incredible that Mr. Howard would have bargained away the rights of Mrs. Franz in any such way.

Mr. SIDDONS: I think counsel should make objections without comment.

A. The $248, which are mentioned in a letter from me to Mr. Daniel, dated about December 17th, 1902, represented the proceeds of a note for $200 and interest which Mr. Daniel had deposited as collateral to secure payment of the notes referred to in these proceedings. When this agreement of December 12th was made, that sum had been lost sight of and Mr. Daniel claimed that that amount should be returned to him as being in excess of the amount agreed upon in the agreement.

Mr. SIDDONS: I am very much afraid, Mr. Hoover, that that does not answer the question.

98 Mr. RIDOUT: He has not finished.

A. (continued). And in accordance with that understanding the money was returned to Mr. Daniel. The return of that money did not alter the fact that an installment of interest had become due on July 28th.

Mr. SIDDONS: I really think I shall have to move, to strike out

that answer as entirely irresponsive to the question, unless it be the last part, and I will ask the question directly.

Q. On July 28th, 1902, Mr. Hoover, do I understand you to say that an installment of interest was due and unpaid? A. Yes, sir; I do say that. And moreover——

Q. Well. A. I was going to say that a large amount of interest preceding that was also due and unpaid.

Q. When did you make demand for that interest, Mr. Hoover? A. For that particular installment?

Q. Yes, sir. A. I am not sure, Mr. Siddons whether we made any particular demand for that installment. We had made demand so often for the——

Q. I am not referring, Mr. Hoover, to a period prior to June, 1902, only beginning with July 28th, 1902, and from there on. I ask you first when, if at all, did the company make a demand for the payment of an installment of interest, which I understand you to say became due and payable on July 28th, 1902. A. The demands for that and the other installments were quite numerous between the period elapsing from probably the maturity of that installment of interest up to the time of the agreement of December 2nd, 1902.

Q. How were those demands made? A. They were usually made by insisting in person to Mr. Daniel that they be paid. Mr. Daniel called quite often at the company's office during the time that this agreement was being talked of, and very often it was suggested that it was necessary that the interest be paid.

Q. Was there any instalment of interest paid, or any demand made on account of principal or interest, on December 12th, 1902? A. I think not, Mr. Siddons.

Q. When was the first demand of interest on account of this trust after December 12th, 1902, made? A. That I don't know.

Q. Do you recall any demands for payments of interest on account of this trust after December 12th, 1902, made by the company, until September, 1904, that you referred to a while ago. A. My impression is there were some, but I would not like to say without refreshing my memory by looking over the letters.

Q. If there were such they would be in the form of letters, you think? A. I think so.

Q. Addressed to whom? A. To Mr. Daniel.

Q. When did you first see Mr. Campbell in connection with this Franz trust if at all, Mr. Hoover?

Mr. RIDOUT: Objected to as not cross-examination.

A. It was a long time after the agreement mentioned, so far as I remember, before I saw Mr. Campbell in connection with it.

99 Redirect examination.

By Mr. RIDOUT:

Q. Mr. Hoover, have you received any information from Mr. Howard concerning the supposed agreement between him and Mr.

Daniel in June of 1902, which leads you to suppose that Mr. Howard entered into an agreement with Mr. Daniel that the indebtedness secured by the Franz trust should not be considered as overdue?

Mr. SIDDONS: Objected to as calling for the supposition of the witness.

Q. Substitute for "suppose," "understand."

Mr. SIDDONS: And I object to his understanding. We want knowledge.

A. I have not.

Q. Mr. Hoover, during the time between December, 1902 and September, 1904, when the formal demand for interest was made, what payments, if any, were made on account of the Franz trust as a result of sales which necessitated releasing? A. There were several such payments made, the exact amounts and the exact times of payments I don't recollect.

Q. Does that account for the failure to formally demand payment on account of the indebtedness under the Franz trust.

Mr. SIDDONS: Objected to as manifestly leading.

Mr. RIDOUT: I will change the form of the question to, Does that or not.

Mr. SIDDONS: Objected to for the same reason.

A. That may perhaps have had something to do with it, but I am not entirely certain now that some demands were not made.

Q. The information I desire to elicit is whether the trust company after December 12th, 1902, was treating the Franz indebtedness as a current indebtedness and not an overdue indebtedness in respect to which indulgence was being given?

Mr. SIDDONS: Objected to not only as leading but telling the witness what information he seeks to elicit, a remarkable form of inquiry.

A. The indebtedness was treated as any other note held for collection by the company would be treated, as an indebtedness upon which installments of interest were accuring at semi-annual periods.

Q. According to that theory, when next after December 12th, 1902 did an installment of interest fall due on that indebtedness? A. An installment of interest would have fallen due on the 28th of the next January.

Recross-examination.

By Mr. SIDDONS:

Q. This particular Franz trust or obligation, Mr. Hoover, was treated by the company, as you have stated just now, the same as in regard to paper held for collection? A. After that these notes, Mr. Siddons, were distributed to Mrs. Franz as part of the rest and residue of the estate of Jacob Franz. Mrs. Franz and the company were joint executors of his estate, and some time prior to

December, 1902 the notes were distributed to her as a part of the estate.

Q. And held by the trust company for the collection of accruing installments of interest. A. Yes, and so held now.

By Mr. RIDOUT:

Q. Did you underseand that the trust company had no duty in respect to the collection of principal. A. I did not understand it that way.

Q. You so understand it now? A. Yes.

Mr. SIDDONS: I certainly object to this form of interrogation of the witness. The question that counsel for the complainants put to the witness on re-cross examination, was plain and plainly understood by the witness, and plainly answered by him. The question is and has been fully answered.

Q. Mr. Hoover, did you understand, after December 12th, 1902, that the sole function of the trust company in respect of the Franz indebtedness, was to collect the interest, and that it was charged with no duty in respect to the collection of principal? A. No, sir; I did not so understand it.

Q. Did you understand that the payment of the principal had been postponed for any definite time and, if so, for what time? A. It was postponed under the terms of this agreement to——

Q. To some time in December? A. From December 2nd, 1902, to December, 1904.

Q. And that was enlightened further by the agreement of December 12th? A. Not in respect to extension.

Q. The amount was corrected by the agreement of December 12th? A. Yes, sir.

Mr. RIDOUT: I offer this agreement in evidence to be marked Exhibit W. D. H. No. 2.

Q. Is this the agreement of December 12th, to which allusion was made frequently in the course of your testimony? A. Yes, that is the agreement.

By Mr. SIDDONS:

Q. I understand you to say, Mr. Hoover, that with the execution of the agreement of December 2nd, 1902, the payment of the principal of this Franz trust was extended or postponed? A. Yes. Will you let me see it to refresh my memory?

Q. That is the agreement you referred to?

Mr. RIDOUT: Yes, that is the one.

Q. That is the agreement to which the postponement or extension of time was the thing assented to by the trust company? A. Yes.

101 By Mr. RIDOUT:

Q. According to the terms of the paper of December 2nd, 1902, the Franz trust is now overdue? A. Yes.

WM. D. HOOVER.

Subscribed by me for this witness this 21st day of October, A. D. 1905.

JOHN A. SWEENEY,
Examiner in Chancery.

At the same time and place also appeared SAMUEL Ross who was produced as a witness in the same behalf, being first duly sworn, testified as follows:

Direct examination.

By Mr. RIDOUT:

Q. Mr. Ross, what is your business? A. I am a merchant doing business here in the name of Barber & Ross.

Q. In what special business? A. The hardware business and builders' supplies in general.

Q. In addition to that have you been trading more or less in the business of buying and selling real estate? A. Yes.

Q. Do you know the location of the property involved in this controversy known as Northwest Eckington? A. Yes.

Q. Have any of your purchases been in the vicinity of this property? A. Yes; and purchases on the south of it.

Q. About how far from this property? A. It adjoins it on the south.

Q. Of what tract or sub-division is the property you refer to now a part? A. It is called Center Eckington.

Q. When did you purchase there, Mr. Ross? A. In March and April, 1903; the 30th of March.

Q. How large a tract did you purchase? A. About 70,000 feet of ground—between seventy and eighty thousand.

Q. What price did you pay for it?

Mr. SIDDONS: I object to that as utterly immaterial, irrelevant and incompetent.

A. The part next the railroad I paid ten cents a foot for it, and across the alley I paid twenty cents a foot, averaging fifteen cents.

Q. How does the property you purchased there compare in your opinion with the property located on the railroad in Northwest Eckington?

Mr. SIDDONS: That is objected to.

A. I think it was probably better.

Q. Was the property you purchased sub-divided into lots and streets? A. Yes, sir.

Q. What would you say, putting it in the form of percentage or any other convenient form, was the property in Center Eck-
102 ington which you purchased compared with the property corresponding in Northwest Eckington; how much more valuable?

Mr. SIDDONS: Objected to as incompetent, the witness not being qualified.

A. Were you speaking of the tract of ground in controversy here as lying north of Rhode Island Avenue, the whole tract?

Q. The whole tract, yes, sir. I will take it both ways. Compare the railroad front which you bought with the railroad front of the Northwest Eckington Improvement Company property. A. They were nearly the same. I think mine was a little better. But as to the whole tract I think the Center Eckington property was worth double as much as the tract north of it.

Q. Do you know when the railroad situation was clarified so as to enable one to judge what was going to be done there by the railroad company.

Mr. SIDDONS: That question is objected to as assuming something that has not been established.

A. I looked into it very thoroughly. I could not tell clearly on March 30th.

Q. What year? A. 1903.

Q. When, if you know, did the situation clear itself by any official declaration or public declarations, which would enable one to determine what the plans of the railroad company in that vicinity were? A. It was after I made the purchase in April.

Q. Mr. Ross, do you remember when you made your purchase whether, for the reason you have spoken of as to the uncertainty of th- railroad plans, you made an absolute or qualified deposit?

Mr. SIDDONS: I object to the question as utterly immaterial, irrelevant and incompetent.

A. I made it on the condition that facilities would be given by the railroad company for freight purposes there, otherwise the deposit was to be forfeited.

Cross-examination.

By Mr. SIDDONS:

Q. Mr. Ross, you are in the hardware business, are you not? A. Yes.

Q. Builders' supplies and materials of different kind? A. Yes, sir.

Q. And that has been your business pretty much ever since you have been in Washington? A. Yes, sir.

Q. How much ground is in this tract that you purchased? A. Between seventy and eighty thousand feet.

Q. You purchased it for sub-division purposes? A. I purchased it for business purposes.

Q. You did sub-divide it? A. No, sir. It was sub-divided before I got it and I cancelled those sub-divisions.

103 Q. Have you purchased any other ground in the vicinity of the Northwest Eckington Improvement Company? A. Yes.

Q. How near the Northwest Eckington Improvement Company? A. About a block from it, I should say.

Q. Whereabouts? A. Well, I had the whole tract of ground west of Fourth Street running over to the cemetery, and north of what was called the O'Connor Tract.

Q. Going towards Fifth Street. A. Crossing Fifth Street.

Q. Did you buy any other property besides that, Mr. Ross? A. That is nearly all that there was there.

Q. What is that tract called that you just referred to? A. It was part of the Kate Chase Sprague property.

Q. The old Edgewood property? A. I think the name of it was Edgewood.

Q. Did you ever buy any land on the Corner of Fifth and V? A. I bought two lots on the corner of Fifth and V; a house immediately north of this and a lot immediately north of that house.

Q. How near were those lots at the corner of Fifth and V to the Northwest Eckington Improvement Company land? A. Well, I should say about a block south of it--towards the south?

Q. How near is the other ground that you purchased, that is, the first purchase that you made? A. That runs practically up to this tract in controversy here.

Q. I am speaking about how near these lots on the corner of Fifth and V that you purchased were to that first tract of seventy or eighty thousand feet? A. They adjoined it.

Q. They adjoined it? A. They adjoined it with an alley between them. I bought this so I would have no one between Fifth Street and the railroad except myself.

Q. And when did you buy those? A. I bought one, I should say roughly, nine months ago, and that house I guess I bought near about the same length of time. Then the two lots south of that land coming to our warehouse on Fifth Street I bought during the past summer.

Q. Which lots were those? A. Corner of Fifth and V.

Q. You bought those lots last summer? A. Yes, sir.

Q. What did you pay for them? A. I think they averaged me about 35¢.

Q. About 35¢? A. Yes, sir; that is those two. The other one I believe is about 20¢.

Q. Those two you say averaged about 35¢? A. Yes.

Q. What was the highest you paid for either one of them? A. I could not tell you that without going back to my books.

Q. Can't you recollect? A. No, sir; I cannot.

Q. Was it more than 35¢? A. My impression is that I made a lump offer for those two lots. They were owned by different people and they adjusted that between themselves.

Q. Do you mean to say that the price you paid was exactly 35¢? A. No, sir. It may have been a few cents more or a few cents less. I should say it would run from thirty-two to thirty-seven cents.

104 Q. You don't know? A. No, sir. I can get you the information if you wish it. My books will probably show it.

Q. You referred to this land you bought, between seventy and eighty thousand square feet. That was purchased in March or April, 1903? A. Yes, sir; that is the time the deposit was made.

Q. You bought that with a view to the railroad project developing? A. Yes, sir.

Q. Have you completed the purchase of that property, Mr. Ross? A. Yes, sir.

Q. Isn't that the subject of litigation? A. There was a suit filed against it, but I have complied with the terms of sale, and paid for it.

Q. Isn't that suit pending still? A. Yes.

Q. It is in the courts of the District now? A. I think it is.

Q. So that the title is involved now? A. Yes, it is now.

Q. When you bought, that suit was pending, was it not? A. My money was up.

Q. When you purchased that land that suit was pending against the property, was it not? A. Some of it was and some of it was not.

Q. How is it now? A. The suit is pending now.

Q. Which is the subject of suit, which end? A. On March 30th, 1903, the southwest was not subject to suit.

Q. Which is that? A. The 35,000 square feet.

Q. Half of that was the subject of suit? A. Half of it was involved in the suit. That suit was not brought then.

Q. And as to half of it, it was? A. Yes. I might be wrong about that.

Q. Will you sell the ground for ten cents a foot? A. Not now.

Q. How much would you consider it worth now? A. I should say it is worth about 75¢.

Q. Worth 75¢ a foot? A. Yes.

Q. An increase of 65¢ between March, 1903, and March, 1905? A. Sixty cents. It averaged about fifteen cents a foot.

Q. It averaged about fifteen cents? A. Yes.

Q. I thought you said ten cents? A. No, the first was ten and the second was twenty, and that averaged about fifteen.

Q. You consider land out in that general neighborhood good property to hold just now, Mr. Ross? A. Yes.

Q. Al- of it? A. Yes, it is good property. I mean where the railroad can get to it, not where the railroad company does not possess railroad facilities.

Q. Land bought in 1903, or a year or two earlier, has increased greatly in value where it is accessible to the railroad? A. Yes.

Q. A great deal of money may be made out of it by those who purchased it, say at prices you paid or about that? A. Yes.

Redirect examination.

By Mr. RIDOUT:

Q. Approximately how many lots have you purchased and built upon in this City and its immediate vicinity? A. In what length of time?

105 Q. Within the last five years, say. A. In dollars and cents.

Q. In numbers, if you can approximate the number. Well, say the last ten years, what has been the number and approximate value?

Mr. SIDDONS: Question is objected to as utterly immaterial and irrelevant.

A. I cannot guess at the value, but it has been very extensive in the last five or six years.

Q. Who is the principal complainant in the litigation to which Mr. Siddons has referred as being on appeal? A. Mr. Daniel.

Q. And who is the appellant? A. The people from whom I purchased.

Q. Who takes the appeal to the Court of Appeals? A. Mr. Daniel.

Q. Mr. Ross, you have spoken of what might be termed as an abnormal increase in values in the vicinity of Northwest and Center Eckington in the last few months. To what do you attribute it? A. To the passage of the railroad bill and change of the freight facilities.

Q. And is the actual development of the railroad plans the controlling factor in making that increase? A. Yes.

Q. And within what period has the actual development of the railroad plans been made? A. Since about May, 1903.

Q. To the present time? A. Yes.

Recross-examination.

By Mr. SIDDONS:

Q. When was the first act of Congress enacted regarding those improvements? A. There was an act, as I now recollect it——

Mr. RIDOUT: Objected to because the Court will take judicial notice of acts of Congress.

A. There was an act prior to May of 1903. I presume it was 1902.

Mr. RIDOUT: 1901.

A. (continued). 1901, was it? But that was indefinite and I would not have gone in under that.

Q. When was the act of Congress in 1903 passed? A. As I recollect it, it was about January or February, 1903.

Q. In January or February, 1903 the second act of Congress was passed? A. Yes. As soon as that act was passed I made my deposit, but I would not go on with the sale until I was assured that I could get railroad facilities there.

SAMUEL ROSS.

Subscribed by me for this witness this 21st day of October, A. D. 1905.

JOHN A. SWEENEY,
Examiner in Chancery.

106 Whereupon the defendant, CHARLES M. CAMPBELL, was recalled for further examination.

By Mr. RIDOUT:

Q. Mr. Campbell, I omitted to ask you on your former examination why it was that the Sanitary Dwellings Company's plan was not

proceeded with? What was the reason? A. Why more houses were not built?

Q. Why the plan of building houses under the Sanitary Dwellings Company's plan was not carried out? A. Because they did not succeed in selling enough stock or any stock.

Q. On page 44 of Mr. Daniel's testimony, and on page 75 of Mr. Redman's testimony, they testified that they had brought suit against you. What is the fact about that? A. They never brought any suit, either of them.

Q. How much money did Mr. Redman advance towards the building enterprise from his private funds? A. He never advanced any.

Q. On page 41 of his testimony Mr. Daniel says that he advanced a good many checks which you collected and paid out on this enterprise, one or two to Cowell. What is the fact about that? A. He never did.

Q. On page 41 he particularly refers to $107.50 paid to Cowell for which he says you took credit without repaying him. What is the fact about that? A. I did repay him and I have that check here with his name on the back of it. (Handing check to counsel.)

Q. Is that Mr. Daniel's signature? (Indicating on check.) A. Yes.

(Check handed to counsel for complainant.)

Mr. SIDDONS: This has been offered.

Mr. RIDOUT: It was marked for identification. Now, I offer it in evidence, to be marked Exhibit Defendant No. 11.

Q. After that check was marked for identification on page 61 at a former session, on page 90, Mr. Daniel says, that he was mistaken and that the check he referred to was one for $100 dated December 24th, 1903, which you never repaid. Did you ever repay that check? A. Yes, and I have it here with his name on the back.

Q. Is that it? (Handing to witness.) A. Yes.

Mr. RIDOUT: That check is offered in evidence to be marked Exhibit Defendant No. 12.

Q. How much did Mr. Daniel contribute to this enterprise in cash that you have not repaid him? A. He testified here that he contributed——

Q. Never mind that. Give me the amount as near as you can, whether it was a large or small sum. A. $3.63.

Q. Do you know to whom he paid that? A. I only know from him that he paid Mr. Wallace.

Q. Mr. Daniel claims that an advance was made by him by the check dated November 24th, 1903. From what source was
107 that money derived? A. That money was derived from a deposit made on the Malnatti sale.

Q. Which Malnatti sale? A. The first Malnatti sale.

Q. Did you charge yourself with it or not? A. I charged myself with that money, and I did not return it to him because it was not his money.

Q. On page 23 of his testimony, Mr. Daniel says that when the

deed was signed he was not aware that you had advanced any of your private funds at that time. What is the fact about that? A. He was aware of it, because he wrote me a letter dated December 6th, 1902, requesting me——

Q. Have you that letter. A. This is a copy I made for you. (Handing paper to counsel.)

Q. Where is the original? A. You called on him for the original from his letter press book at the former meeting.

Mr. RIDOUT: Have you that letter of December 6th, 1902, a letter from Mr. Daniel to you?

The WITNESS: He requested me to advance the sum of $1,007.

Mr. SIDDONS: Is this supposed to be a copy of the letter in which that request is preferred?

Mr. RIDOUT: Yes.

Mr. SIDDONS: The witness says, as I understand him, that the original of this he has lost.

Mr. RIDOUT: He has lost it or mislaid it.

Q. Can you recollect independently of that paper whether it was the genuine signature of Mr. Daniel or whether it was signed by Mr. Winfield? A. No, it was Mr. Daniel's letter. I read it several times, and it was signed by him. This is a copy I made for you.

Mr. RIDOUT: I offer this letter in evidence to be marked Exhibit Defendant No. 13.

Q. On page 21 Mr. Daniel testified that you told him at 617 E Street, the office of the Armat Picture Company, that you were going to put a whole lot of money in this enterprise. What is the fact about that? A. I never told him any such thing. On the contrary I took particular pains to tell him I was not going to, and so wrote him at New London, Connecticut.

Mr. SIDDONS: I object to that.

Q. Has that letter been put in evidence? A. Yes, sir.

Q. On page- 31 and 74, respectively, of the testimony for complainants, Mr. Daniel and Mr. Redman say they frequently demanded an accounting of you. What is the fact about that? A. They never demanded an accounting of me. I was the man that advanced the money, and I made several demands on them for an accounting, one in writing.

Q. Do you remember the date of that written demand? A. It was about December 10th, 1902.

Q. To whom was it addressed? A. Mr. Daniel.

Q. Will you please product it. A. It is already in evidence. It is included in the memorandum I left on Mr. Daniel's desk,
108 and which he has submitted in evidence. It is the first paragraph of the memorandum.

Q. On page 74 Mr. Daniel says that you never paid a dollar of obligations that had matured December 31st, 1903. What is the fact as to that? A. Prior to December 31st, 1903, I met all the obligations as they fell due, except in one or two cases where there

was a lapse of a day or two through oversight. But, after December 31st, on the advice of my counsel, I refused to pay more than my one-third of the indebtedness, owing to the fact that I had advanced a large sum of money to the enterprise beyond my share.

Q. Did Messrs. Daniel and Redman pay their respective one-third shares, or offer to do it? A. When?

Q. At any time when you called upon them to co-operate with you? A. No, sir. They were very delinquent and caused a great deal of embarrassment. After the Malnatti money came in there was some betterment of conditions as long as that lasted.

Q. Had any suit against the three of you resulted from that refusal on their part to provide their respective one-third in cash? A. Yes, sir.

Q. What was the amount sued for, if you remember? How many suits were there, in the first place? A. Three.

Q. How many of them remain unsatisfied? A. They have all been satisfied.

Q. How many notes did Mr. Daniel get discounted? A. One.

Q. When was that? A. $600 at the Second National Bank.

Q. Who paid the curtails and interest on that $600? A. I did, except that I charged him with $100, personal indebtedness from him to me.

Q. Did Mr. Redman get any note discounted for the benefit of the enterprise? A. Yes, one small note, $375.

Q. Was that ever repaid to him? A. Yes.

Q. By whom? A. By me.

Q. The complainants in their bill aver that you are indebted to the enterprise in an amount over $5,000. What are the facts about that? A. Instead of my being indebted to the enterprise over $5,000, the enterprise is indebted to me over $4,000—over $4,200; I think about $4,272. I cannot recollect the exact figures without the memorandum. Do you want me to modify that. I can make that more exact.

Q. If you want to make it more exact, please do so. A. The indebtedness of the enterprise to me is $4,272.

Q. When you entered into the contract of October 23rd, 1902, what was the prospect, as you saw it, of deriving profits from building dwelling houses on that property?

Mr. Siddons: The question is objected to as calling for the speculative judgment of the witness.

A. I saw no profit in it whatever.

Q. Can you give the reasons why you did not see any profits in it? ?

109 Mr. Siddons: Objected to for the same reason.

A. Well, I saw no profit in going into partnership in the building of houses on ground belonging to other people and paying for the ground more than I could buy similar ground in the same neighborhood. If I wanted to do that kind of thing I had ground of my own to improve.

Q. When Mr. Redman fixed the price of 15 cents for his interest in the railroad frontage, was it before or after the railroad company commenced excavating? A. The railroad had then excavated right across the tract.

Q. Had the fact of the Ross purchase then been announced or become known? A. Yes, I think he had started his warehouse.

Q. How many warehouses did Ross build on his property? A. Three or four very large ones.

Q. At the time when you accepted Mr. Daniel's proposition which led to the contract of October 23rd, 1902, was the equity in this Northwest Eckington property valuable.

Mr. SIDDONS: I object to the question as relating to some negotiation or representation which took place prior to the execution of the contract of October 23rd, 1902, and therefore incompetent. The question is objected to for the further reason that it calls for the witness' opinion as to what he thought of the proposition, as utterly immaterial and irrelevant. He must have thought it was valuable or he would not have entered into the contract.

A. At that date I considered the trust of about $33,000, including interest and taxes, almost exhausted, if it did not entirely exhaust, the equity in the property.

Q. Wherein did you see any hope for increased value of the property then?

Mr. SIDDONS: Let it be understood that I object to all this line of examination.

Mr. RIDOUT: Yes.

A. After studying the railroad situation I concluded that it would be impossible for the railroad companies to spend approximately fourteen million dollars in a small area, within a mile of this property, without increasing its value, if the property could be saved from foreclosure.

Q. If that was your idea, what was the advantage of building any houses at all? A. The object of building the houses was to produce an income that would carry the fixed charges.

Q. Is there any improvement of Rhode Island Avenue in the vicinity of this property now in progress? A. Yes.

Q. Do you know what the appropriation is? A. It is for macadamizing, and the appropriation——

Q. How much was the appropriation? A. $20,000.

Q. In your discussions with Mr. Daniel, do you recollect whether at any time he stated to you in substance that it was better to save two-thirds of the property than to lose it all?

110 Mr. SIDDONS: When?

Mr. RIDOUT: Shortly prior to the execution of the agreement of October 23rd, 1902.

A. Yes, sir.

Q. Has there been any marked increase in the value of this property during the last year? A. Yes, sir.

Q. To what do you attribute it? A. To the railroad developments and the building of the large Ross warehouses and the development and demand for property along the railroad front for warehouse purposes.

Q. How would you characterize the degree of enhancement of value, as large or small? A. The enhancement of the railroad frontage for a depth probably of two hundred feet, has been large, as to the rest of the property I don't think the enhancement has been material.

Q. How much of this property having a railroad frontage has been sold? A. There were 38000 feet next to Mr. Ross sold to Antonio Malnatti.

Q. At what price was that 38000 feet sold to him? A. About the end of the year, 1903, at forty cents a foot.

Q. How long was it after that before the institution of this suit? A. A few months.

Q. Had Mr. Daniel ever made the claim to you prior to the bringing of this suit that the deed to you was not intended as an absolute conveyance? A. No, sir; never.

Q. Has Malnatti made a second purchase of this property? A. Yes, sir.

Q. Of how much ground? A. About $3,000 worth at 85 cents a foot.

Q. What use has been made of the money derived from the proceeds of the second sale? A. It has been used in paying off the indebtedness against the property—against the houses.

Q. Has it all been used in that way? A. Oh, part of it was used on the Franz trust.

Q. Who received the $500 deposit which was made by Malnatti at the second sale? A. Mr. Daniel.

Q. Has he ever returned it to the fund? A. No, sir.

Q. Did you ever ask him to contribute it for the purpose of meeting obligations connected with the enterprise? A. Yes, sir.

By Mr. SIDDONS:

Q. Is that in writing? A. Yes, sir.

Mr. SIDDONS: I object. The writing is the best evidence.

Mr. RIDOUT: Please produce the letter I wrote as counsel for Mr. Campbell, to Ralston & Siddons.

By Mr. RIDOUT:

Q. Mr. Campbell, why was it that more than ten houses were not built on that property?

Mr. SIDDONS: Question objected to because all that ground has been heretofore covered in the interrogation of the witness by counsel for defendant.

111 A. They were not built for the reason that I found that Messrs. Daniel and Redman were without funds and without bank credit, and for the further reason that the ten houses were sufficient to carry the fixed charges on the property, and for the still

further reason that the property had developed as railroad property, and that all of us considered it would be folly to build more houses.

Q. How many times have notes, given in connection with this enterprise, been protested because Messrs. Daniel and Redman have failed to pay their shares, since December 31st, 1903? A. About ten.

Q. In the cases of those protests, did you, before the protests, offer to pay your share in cash? A. Yes, sir.

Q. Do you recollect an offer of that sort in respect to a $3,000 note? A. Yes, sir.

Mr. SIDDONS: I object.

Q. Did you inform Mr. Daniel that you were willing to pay your one-third in cash of any of these notes that went to protest? A. Yes.

By Mr. SIDDONS:

Q. How was that information conveyed? A. It was conveyed in a communication to his counsel.

Mr. SIDDONS: I object, then, to his testifying to the contents of a written communication.

Q. A written communication you mean? A. Yes.

Mr. SIDDONS: I object.

Mr. RIDOUT: I call upon counsel for any communication received from Mr. Campbell.

Mr. SIDDONS: I think I am entitled to some idea as to dates.

Q. Now, Mr. Campbell, did you have any conversation with Mr. Daniel concerning your willingness to pay even as much as one-half of the $3,000 note? A. No, sir.

Q. To whom did you communicate that willingness? A. I communicated that willingness to his counsel.

Q. About when? A. After the note went to judgment.

Q. What month and what year? A. In November, 1904.

Mr. RIDOUT: Mr. Siddons, I call upon you to please produce that letter.

Q. Did you receive any response to that as to the extent of Mr. Daniel's willingness to contribute? A. Yes, I received a notice that Mr. Daniel——

Q. Was that in writing? A. Yes, sir.

Q. Where is it? A. I haven't it with me.

Mr. RIDOUT: Please bring it at the next session. (To the witness.)

Q. How many times have you been sued because Messrs. Daniel and Redman refused to contribute their shares of the necessary cash? A. Three times.

Q. Who brought those suits, if you remember? A. Knott and Moler, Muddiman, and Thomas R. Riley.

112 Q. How many suits have been threatened on the same ground since December 31st, 1903? A. Three.

Q. In each of these cases did you or did you not offer to pay your one-third? A. Yes, I always offered to pay my one-third.

Q. Were any checks tendered by you for your one-third, refused because those gentlemen refused to pay their two-thirds? A. Yes.

Q. Do you know how many? A. Three or four.

Stipulation.—In respect to all the testimony given by Mr. Campbell and to be given by him hereafter, it is stipulated by counsel that at the hearing counsel may make any such objections as to incompetency or irrelevancy of the testimony, or otherwise, excepting only objections addressed to the form of the questions, as he might have made during the actual taking of the testimony, and to the same effect.

Mr. SIDDONS: Let it go in that I now object, and my objection is considered as always made to any answers of the witness in which he is quoting from or giving the substance of written communications in any form.

Q. When the Malnatti money became available, what effect did that have on the payments? Did it improve them or not? A. Yes, it improved them temporarily as long as the money lasted.

Q. Is there any protested note out now? A. Yes, sir; one.

Q. What is it? A. A note in the Citizens' National Bank.

Q. Payable to whom? A. Payable to Albert M. Cowell & Sons for over $700.

Q. Did you notify Mr. Daniel that you were ready to pay your one-third of that? A. I notified the bank.

Q. Did you ever notify Mr. Daniel? A. No, sir. I didn't want to have any communication with him.

Q. What, if anything, has been done to provide for that note? A. An order has been given for a small sum still in the hands of Mr. Call for $142.75 as a curtail.

Q. If in addition to that $142.75 the $500 Mr. Daniel has was applied to that note, what balance would it leave on the Cowell note? A. It would pay it all but about $51.21.

Q. Is the Cowell note the last obligation out? A. No. There is another small note for less than $200 in the Lincoln National Bank.

Q. Where was that given? A. To William N. Ward, the plumber.

Q. Is there any note to Rudolph West & Co.? A. Yes, but they are not due yet, for about $700; less than $700.

Q. Did you notify Mr. Daniel of your willingness to pay one-third of this Ward note? A. I gave Ward a check——

Q. The question is whether you notified Mr. Daniel? A. No, I did not notify Daniel. I notified Ward.

Q. Notification to Ward is not competent evidence. A. Mr. Ward went to Daniel.

Q. How do you know that? A. He brought back a written communication saying——

Q. Have you got that? A. Yes.

113 Q. Have you got it with you? A. No, sir.

Mr. RIDOUT: Please bring it at the next session. (To the witness.)

Q. There has been testimony by Mr. Hoover on cross-examination or some of the repeated re-cross or re-direct, by Mr. Siddons, concerning the payment of $500 on that Franz indebtedness on June 16th, 1902? Whose money was that?

Mr. SIDDONS: Objected to as already testified to by the witness in the previous examination.

A. The money was furnished by me through Mr. Daniel.

Q. During the progress of this enterprise, what amount in the aggregate, if any, has Mr. Daniel borrowed from you for his personal uses? If you don't remember, say so.

Mr. SIDDONS: Objected to as immaterial and incompetent.

A. He borrowed several sums of $30. and $50. and one sum of $187.50, due at the Riggs Bank for interest. It was due and he did not seem to have the money to pay it.

Q. How much in all, if any, does he owe you on that account now? A. I cannot tell without looking at the records.

Mr. SIDDONS: About the letter Mr. Campbell refers to, in November, 1904, I cannot find any such letter.

Stipulation: It is stipulated that the time for taking the complainants' testimony is extended until the 25th of March, 1905.

Whereupon an adjournment was taken to meet subject to agreement of counsel.

MARCH 27TH, 1905—7.30 o'clock P. M.

Met, pursuant to agreement of counsel at the same place on Monday, March 27th, 1905, at 7.30 o'clock P. M.

Present: Same counsel and the complainants and defendant in person.

Whereupon CHARLES M. CAMPBELL resumed the stand.

Mr. RIDOUT: Counsel for the defendant understands that it has been agreed that it will not be necessary for him to make objection during the taking of this testimony, but that the right is reserved to him to make such objections at the final hearing to the same effect as if made during the course of the examination.

Mr. SIDDONS: Yes.

Cross-examination.

By Mr. SIDDONS:

Q. Mr. Campbell, how long have you lived in Washington? A. Since 1892.

Q. And what has been your business? A. My business has been building houses and dealing in real estate to a limited extent.

Q. When you say you have been building houses and dealing in

real estate, do you mean as a general builder and a real estate broker? A. No, sir.

114 Q. Or merely on your own account? A. Yes.

Q. When were your first building operations in Washington? A. In 1893.

Q. And what were they? A. An apartment house for the firm of J. W. and C. M. Campbell.

Q. That is yourself and brother? A. Yes.

Q. That was on Columbia Heights? A. Yes, sir.

Q. What was the next building operation? A. I built my own house, which really preceded the apartment house.

Q. And what was the next? A. The next were houses I built on Harvard Street and Columbia Road.

Q. When did you commence their construction? A. In 1902.

Q. When? What time of the year? When did you commence their construction? A. The 1st of May.

Q. The 1st of May, 1902? A. Yes.

Q. And you were then constructing some houses on Harvard Street? A. Yes, sir.

Q. How many? A. Five.

Q. And were you at the same time building the houses on Columbia Road? A. Yes, later.

Q. How many? A. Five.

Q. Five there too? A. Yes.

Q. What was your next building operation? A. A single house on Harvard Street.

Q. And the next? A. The next was the undertaking of these Eckington houses.

Q. And what in addition? A. I know of no other houses but those.

Q. So that from 1892, when you arrived in Washington, to the present time, the building operations in which you have been engaged, either on your own account or on account of your brother and yourself, and later this Eckington enterprise, are all the building operations which you have conducted? A. Yes.

Q. The apartment house that you first referred to is the Berwick apartment house on 14th Street? A. Yes.

Q. And the residence is the large house on the north side of Harvard Street? A. Yes.

Q. You stated in your examination in chief that you had not been in New York in the winter of 1901? A. Yes, sir.

Q. You don't mean to say, do you, that you were not in New York during the year 1901, do you? A. No, sir. I said I was not in New York in the winter of 1901-2, I believe it was.

Q. Were you in New York in 1901? A. Yes.

Q. When. A. During the Autumn.

Q. What months of the Autumn? A. I don't recall the exact date. I think it was August and September, and October possibly.

Q. I would like you as near as possible to fix it. Maybe I can help you. Is it not a fact that you were in New York in September

and October, 1901, for at least five weeks pretty continuously? A. I probably was.

Q. You say you probably were. What is the fact about it? A. I cannot recall the date.

115 Q. Did you receive any correspondence, letters, while you were in New York that fall? A. Yes, sir.

Q. Have you that correspondence? A. Not where I would know where to put my hand on it.

Q. Would you recall it if what purport to be copies of it were shown you? A. Probably.

Q. Now, here are letters purporting to be copies of letters sent to you, Mr. Campbell, in New York. I will ask you to look them over. I am not going to inquire about their contents at all. The contents are not immaterial, but I would like you to tell me if you received letters, the originals of those, in New York. While you are looking at them I show you some letters written from yourself (handing paper to witness). A. I have no doubt these are all right.

Q. These were received by you while you were in New York, Mr. Campbell? A. Yes.

Q. Can you tell me now when you were in New York? A. Yes, I was there during September and October, 1901.

Q. Now, some of these letters I notice are addressed to you at No. 30 Broad Street, New York City? A. Yes.

Q. What was No. 30 Broad Street while you were there? Why were you there at No. 30 Broad Street? A. That was the office of the Armat Company.

Q. And who was there in New York at the same time with you on the same business? A. Mr. Daniel.

Q. The complainant in this case? A. Yes.

Q. Now, while you were staying in New York during those two months, where *you* you boarding? A. I was boarding over in Brooklyn, on Pierrepont Street.

Q. At a boarding house? A. Yes.

Q. And was Mr. Daniel boarding there too? A. Yes, sir.

Q. Going back for a moment, when you built the apartment house that you referred to, who was your architect? A. Harvey Page.

Q. And when you built your house, who was your architect? A. Harvey Page.

Q. And the Harvard Street house? A. Waddy B. Wood.

Q. And the Columbia Road houses? A. The same.

Q. Aside from these building operations that you have referred to, you have not been engaged in the business of building, have you? A. Not in a professional way. I built several houses in the west.

Q. That is before you came to Washington? A. Yes.

Q. You have not been engaged in the business of building houses for other people? A. No, sir; but I consider that I have a very exact knowledge of building houses.

Q. Now, you took up the project, as I understand your testimony of developing this Eckington Improvement Company some time in the winter or early spring of 1902, did you not? A. No, sir; I didn't say anything of the kind.

Q. When did you take it up? A. I say Mr. Daniel approached me on the matter in the autumn of 1901 by taking me out and showing me the property.

116 Q. What time in the autumn? A. November, about—December.

Q. Now, which do you mean? A. I mean in the autumn of 1901. That is as near as I can say; before the winter set in.

Q. The autumn of 1901 began in September? A. Yes.

Q. And it did not extend beyond December? A. I didn't say—I said November I thought it was.

Q. Are you sure it was in November? A. It was before winter set in. The weather was warm and pleasant yet. We walked all over the ground.

Q. You are positive it was before the 1st of January, 1902? A. Yes, sir.

Q. That you went over the ground with Mr. Daniel? A. Yes, sir.

Q. Well, I will repeat my question: When was it that you took the matter up, no matter who approached the other on the subject. When did you first take it up actively? A. Well, I took it up a few weeks prior to the date of the first contract, I should say about January or February, 1902.

Q. Now, at that time, January or February, 1902, did you begin—you say you took it up. Do you mean you began to work on it in any way? A. No, sir.

Q. What do you mean? A. I mean we went through the necessary talk that led up to the contract of March 13th, 1902.

Q. Then I haven't made myself clear to you. I want to know when you began work under that contract or with reference to it—the actual work of doing something toward the plan that you determinded upon. A. I think it was the month of May, early in the summer.

Q. Early in the summer of 1902? A. Yes, I think it was about May.

Q. When did you organize the Sanitary Dwellings Company? A. If you will allow me to refer to a date on a memorandum I will give you the exact date.

Q. If you need to refresh your recollection. A. (Looking at papers.) It was in April, 1902.

Q. That is when your organized the Sanitary Dwellings Company? A. That is when we incorporated it.

Q. Who prepared the prospectus that was issued in the name of that company? A. I did.

Q. You wrote it? A. I wrote it with suggestions from Mr. Daniel.

Q. Is that a copy of it? (Handing pamphlet to witness.) A. Yes, sir.

Q. When did you get that ? A. I cannot supply you with the date.

Q. Would the payment of the printer's bill be any help to you to recollect? A. Yes.

Q. (Handing paper to witness.) A. May 5th, 1902.

Q. That is when you received it from the printer? A. Yes, sir. I would say that these cuts were inserted by Mr. Daniel, most of them.

117 Q. What was the situation with the railroad—— A. I would like to add the particular ones he inserted——

Q. I am not going to ask you about cuts. You have answered my question. What was the situation with the railroad proposition, as you describe it, at the time in May, 1902? A. In May, 1902, the final bill under which the present railroad improvements were made, was not yet passed. There had been a bill passed in 1901 which was afterwards annulled by the passage of the second bill.

Q. You mean the first bill was repealed? A. Annulled. I believe the second bill took the place of the first one. The first bill called for two stations.

Q. I am not asking about the acts of Congress, which we can deal with. You had given consideration to the railroad proposition, had you not? A. When?

Q. Why, at the time I am speaking about, in May, 1902? A. Yes, sir.

Q. You had very definite ideas, did you not, as to what the railroad proposition meant to this tract of land? A. I had my own ideas about it.

Q. They were definite ideas, were they not? A. Well, no, not any more definite than they would naturally be under such circumstances.

Q. You anticipated that the railroad company was going to expend a large sum of money within very close proximity to this property? A. I expected they would, yes, sir.

Q. You thought they were going to do so? A. Yes, I thought they would do it.

Q. Now when did you come to that conclusion? A. Definitely after the passage of the second bill.

Q. We are talking now, Mr. Campbell, at the present moment of not later than May, 1902, when you received this prospectus. I asked you when it was in respect to that date that you had come to these definite views as to what that proposition meant? A. I cannot give you the exact date.

Q. Approximately when? A. I cannot give you that.

Q. How did you reach the conclusion? A. I reached the conclusion that large improvements like those would naturally benefit this property, if they were carried through as we anticipated.

Q. You believed they were going to at that time, did you not? A. Yes, I believed there would be very important improvements, but at the same time there was a serious question in my mind whether they would not run ten or twelve tracks alongside this property for the storage of empty cars and thus ruin it for residence purposes. And that is the question that I weighed very carefully and was never very clear on.

Q. When did you become clear on that? A. Well, not until 1903.

Q. That was after the passage of the second bill? A. Yes, sir; until after the purchase by Mr. Ross of his large tract of ground and the commencement of his warehouses.

118 Q. Now when did you come to this belief that you have just stated; how long prior to May, 1902? A. I didn't say it was prior to May, 1902.

Q. Again, Mr. Campbell: You stated in May 1902 you believed that these large railroad developments were going to occur. Now I ask you when did you come to that belief? A. I also answered you that I don't know.

Q. You don't know when you came to that belief? A. No.

Q. How did you reach it in May, 1902? A. Simply by the process that I just now described to you, by reasoning on that proposition.

Q. Reasoning from what fact? A. The facts that there was a probability of the railroad improvements going in there.

Q. And what was that probability based upon? A. Based upon the talk in railroad circles, and Mr. Daniel's talk to me, which was continuous.

Q. What talk in railroad circles did you hear? A. Well, there were frequent articles in the paper and Mr. Daniel never lost an opportunity to reinforce them.

Q. When did you first see these articles? A. Oh, I don't know now when. They were published every few weeks.

Q. Isn't it your recollection that the talk about this railroad development antedated the passage of the first act in 1901, and it continued with increasing force after the passage of the act in 1901? A. No, sir.

Q. When, then? A. I think the first bill called for two different railroad stations, and was entirely different from the present bill under which the present improvements had been made.

Q. I am not asking you about the contents of the bill. When was it that you began to see these newspaper articles? A. I don't know the dates.

Q. Approximately? A. I cannot give them approximately.

Q. It was prior to May, 1902, was it not? A. I cannot say there was. There were publications back there I have no doubt. I cannot recall them.

Q. When did you first know of the passage of the act of 1901? A. I suppose I saw it at the time in the newspapers.

Q. At the time it was enacted and became a law? A. Yes.

Q. So that, when you went out to the property in, as I believe you said, the late Autumn or the Autumn of 1901, you knew that the bill had become a law, didn't you? A. No, sir; I hadn't given any attention to it at that time, and my information was largely at that stage derived from Mr. Daniel.

Q. Then, do you want to correct your former answer that you probably saw it in the paper in 1901 when it was enacted? A. No, I don't want to correct anything. I don't think I said that.

Q. I think you did. A. I want to have my answer read, if I said that.

Q. You in May, 1902, wrote this prospectus, and you had, as you believed, a definite idea or notion about these railroad operations did you not? A. I already answered that question I think fully.

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Q. I am afraid I will have to get you to answer it again. If you have I have forgotten it. What do you say about that?

(Preceding question read to the witness.)

A. I have no further answer to that, except what I have already said. It has been answered two or three times.

Q. In this prospectus you use this language, referring to the ground which is the subject of this controversy, "This company possesses about 10½ acres of ground contiguous to the immense improvements of the Pennsylvania and B. & O. Railway systems as shown on the accompanying map. This railroad expenditure which has been estimated at $20,000,000, will bring a large number of families into this region, people with steady employment and good wages who will want exactly this class of homes." You believed that, didn't you, when you wrote it, Mr. Campbell? A. I recall those as being Mr. Daniel's ideas.

Q. I thought you said you wrote this? A. Yes, with his assistance. He would every day pump information into me on that line.

Q. Whether he suggested it or not, you wrote it? A. Yes, I wrote it.

Q. My question is, did you believe this at the time? A. Yes, I believed it when I wrote it.

Q. You also wrote this paragraph, Mr. Campbell, that, "The Company confidently offers this stock at par as an attractive and safe investment. It is believed by the officers that not less than six per cent. will be earned from the date when the first forty houses are finished, and not less than five per cent. from the date of subscriptions." At that time your design was for this Sanitary Dwellings Company to build not less than forty houses? A. The language you quote there is applicable to the Sanitary Dwellings Company.

Q. I am reading from this prospectus. A. You haven't said so.

Q. I beg your pardon, sir. That was the design of the Sanitary Dwellings Company plan, was it not? A. I believe so. Not any immediate construction of that number of houses.

Q. I will ask you to look at the plat in that prospectus, Mr. Campbell, and I call your attention to what is designated on it as a site of the station. I want you to state, please, what was meant by that? The site of what station? A. The Union Station.

Q. Now, as finally located, Mr. Campbell, where is the Union Station with reference to this? A. It is on that location, I believe.

Q. Practically there, is it not? A. Yes, sir.

Q. So that the later act of Congress which you have laid great stress on did not change substantially the location of the station from the plan outlined by you in May, 1902, in this prospectus of the Sanitary Dwellings Company, did it? A. Yes, I believe at the time that map was printed, if it was printed in May 1902——

Q. Why do you say, "if?" A. The final act had not been passed,

and I believe that map was printed on the prospect of that
120 bill going through.

Q. You believed at the time that it was going through? A. I hoped it would.

Q. Did you believe it? A. I cannot recall now. Whatever I stated in the prospectus I believed.

Q. Now, when was the idea of organizing the Sanitary Dwellings Company abandoned? A. Late in the summer of 1902.

Q. And the reason for that. A. Because the sale of their stock was a failure.

Q. Who undertook the sale of their stock under the contract? A. There was no contract that I know of providing for the sale of the stock.

Q. Who undertook the incorporation and the organizing of this company? A. I did.

Q. And didn't that involve the sale of the stock? A. Later it did.

Q. What do you mean by later? A. Well, you naturally would not sell any stock while it was being organized, would you?

Q. Then, you undertook the incorporation, the organization, and the sale of the stock of this company; that is correct? A. No, sir.

Q. What is? A. I undertook the organization of the company, and I helped in the sale of the stock, which afterwards very largely devolved on me. I supposed at the time they would probably sell their stock.

Mr. SIDDONS: I move to strike out that irrespective language of the witness. I did not ask for his supposition.

Q. You did undertake the sale of stock of that company, did you not? A. No, sir.

Q. What do you mean, then, by saying that it devolved on you? A. By the intermediary of a salesman.

Q. Under your supervision and direction? A. Not any more than Mr. Daniel's.

Q. What do you mean? You say it devolved on you? A. I mean it largely devolved on me.

Q. What do you mean by that? A. I mean just what I said.

Q. You say it didn't mean you were to sell it. A. No, sir. I didn't offer the stock to anybody.

Q. What, then, do you mean by saying that the sale largely devolved on you? A. It devolved on me, as I said a few moments ago, but it went through a stock salesman named Burnley.

Q. You gave him a power to sell it? A. No, sir.

Q. Who did? A. Mr. Daniel and I.

Q. Both gave it? A. Yes.

Q. Who paid him? A. I did.

Q. Who selected Mr. Burnley? A. Mr. Burnley was selected by Mr. Daniel and myself.

Q. Did you select anyone else? A. Mr. John O. Johnson helped some.

Q. When you say that, do you mean to answer my ques-
121 tion by saying you employed him? A. He was not employed.

Q. Answer my question. What do you mean, in response to my question, by saying that Mr. John O. Johnson helped some? I will ask you whether anyone else was employed by you? A. In what?

Q. We are only talking about one thing, the sale of this stock. A No, sir.

Q. What do you mean by saying that he helped some? A. Mr. John O. Johnson helped some indirectly in the organization of the company and promoting its interests, and I believe probably tried to sell some of the stock.

Q. You asked him to? A. I did.

Q. Did you authorize him to attempt to sell any? A. Yes, sir.

Q. Now, you say that the Sanitary Dwellings Company enterprise was abandoned in the late summer. That is correct, is it? A. Yes, sir.

Q. Now, can you approximate in what month it was abandoned? A. Well, I should say August or September, 1902.

Q. August or September, 1902? A. Yes.

Q. How much had you advanced on account of the Sanitary Dwellings Company up to the moment of its abandonment? A. About $481.00.

Q. About $481. up to August or September, 1902, when it was abandoned? A. Yes, sir.

Q. You also stated in your examination in chief that the previous June, June 16th, 1902, you had put up $500 which was applied to this Franz trust? A. Yes.

Q. So that you had for those two purposes paid out, as you claim, $981. up to the time of the abandonment of the company in 1902? A. Yes, sir.

Q. Before the company was abandoned, however, and after its incorporation and organization, you sought to get the Northwest Eckington Improvement Company to execute a deed of this land to it, did you not?

Mr. RIDOUT: Objected to as not cross-examination.

A. To it? What do you mean by "it."

Q. To it; to the Sanitary Dwellings Company. A. There was a deed executed to the Sanitary Dwellings Company.

Q. That does not answer the question. A. During the period of which you speak——

(Pending question read to the witness.)

A. No, sir. Mr. Daniel was more anxious to execute the deed and did execute it and actually delivered it.

Q. You did not seek that deed yourself? A. No, sir.

Q. Never asked for it? A. No more than we jointly decided in the matter.

Q. Which was it; was it Mr. Daniel who was anxious to give it or you jointly decided it should be given? A. We jointly decided it should be given.

Q. The first statement is not correct? A. It is correct. Mr. Daniel was very anxious to get the deed executed.

122 Q. And you assented? A. Yes. At the same time we jointly acted in the matter.

Q. The deed was executed and delivered? A. Yes.

Q. To whom? A. To the Sanitary Dwellings Company.

Q. Who obtained physical possession of it? A. I don't remember.

Q. Was it not given to you? A. Mr. Daniel had it executed by Mr. Mitchell.

Q. I mean after its execution? A. I cannot recollect.

Q. Wasn't it delivered to you and didn't you have it in your possession for some time? A. I cannot recollect what the method of delivery was.

Q. Now, when in October, 1902, the new contract was executed, it was designed, was it not, to carry out the general principal of the scheme of building contemplated in the Sanitary Dwellings Company? A. No, sir.

Q. It was not? A. It had no relation to that.

Q. You did not propose to build houses anything like those contemplated in the prospectus and scheme of the Sanitary Dwellings Company? A. Yes, sir.

Q. You did intend to build such houses? A. Yes.

Q. What, then, did you mean by saying that no such thing was contemplated? A. I mean that the Sanitary Dwellings Company's plan had no relation to this plan, although we did contemplate the construction of the same kind of houses.

Q. You did intend to follow out the general idea of building the same kind of houses as that contemplated when you organized this company? A. Yes, sir.

Q. In October, 1902, there was no change, was there, in the general railroad situation? A. Not a great deal.

Q. There had been a sub-division of this property made out there, had there not, Mr. Campbell? A. No, sir.

Q. I don't mean a sub-division recorded in the Surveyor's office? A. There had been a plat made, but that is not a sub-division.

Q. And that plat had been recorded in the Land Records, had it not? A. I don't know, sir.

Q. You knew of that plat, did you not? A. Yes, sir.

Q. What? A. I saw it in the deeds.

Q. What deeds? A. The deeds to the Northwest Eckington Company used and also on a sheet Mr. Daniel had in his office.

Q. Now, when was this plat, introduced in evidence, prepared, Mr. Campbell? (Handing plat to witness.) A. That was prepared at the instance of Mr. Daniel.

Q. I didn't ask you at whose instance. A. In February, 1902.

Q. In February, 1902? A. The order was then given and it was executed within a few weeks thereafter.

Q. That was prior to the making of the first contract, was it not? A. And it was delivered, I think, along in probably—it was paid for March 24th.

Q. 1902? A. Yes.

Q. So that you had received it by that time? A. Yes, sir.

123 Q. Looking at this plat, Complainants' Exhibit 8, does the railroad line indicated here on that plat bear actually that

relation to the property at the present time. A. Yes, except the lower corner has been sold off to Malnatti.

Q. Of that square (indicating). A. Right in through there (indicating). About two hundred feet of frontage on the railroad.

Q. About two hundred feet frontage on the railroad has been sold? A. At the south end, yes, sir.

Q. Does Rhode Island Avenue as shown on this same plat bear actually to-day the relation to this property that appears on this plat? A. Well, Rhode Island Avenue at that time——

Q. I am asking you about it at the present time. A. Now, it is being improved into a street.

Q. But it was there, wasn't it? A. The lines were there. It was impassable for vehicles.

Q. When was the street railway run through there? A. I don't know, sir.

Q. Didn't it run through at the time the first contract was made? A. Yes, sir.

Q. Now, the Northwest Eckington Company owns property on that north side of Rhode Island Avenue, doesn't it? A. Yes, sir.

Q. The first five houses that were built under this contract of October 23rd, 1902 were built on the north side of Rhode Island Avenue, were they not? A. On the north side of the street car line called at that time Rhode Island Avenue, but not yet improved as a street, except there was a piece of pavement laid in front of some houses.

Q. What houses? A. One or two frames there.

Q. Where? That is rather indefinite. A. West of the proposed 6th Street.

Q. West of proposed 6th Street, and running to where? A. Just a short strip about 200 feet—100 feet.

Q. Did it go as far as 5th Street? A. I am not sure whether it did or not. I don't think it did.

Q. Was there any water out here? A. I think a main went down under the street car line, but where it went I don't know.

Q. What do you mean by where it went you don't know. A. I know when we built those houses we had to extend the mains. I don't know how far. Quite a bill for it came in.

Q. There was a water main on Rhode Island Avenue, was there not? A. I believe there was. I cannot say of my own knowledge.

Q. And the only sidewalk was a little bit west of 6th Street running on the north side? A. Yes, on the north side.

Q. None on the south side? A. The south side had a piece of decayed tar sidewalk, and in a very bad state of dilapidation, eaten up by tree roots and almost impassable for pedestrians. It was laid there when Mr. Daniel bought the property.

Q. This was the condition in 1901 when you first saw it? A. Yes.

Q. Was there any gas out there? A. No, sir.

124 Q. No gas at all? A. No, sir; not that I know of; perhaps there was.

Q. Now, there were no other improvements at that time out there

at all? A. What do you mean, Mr. Siddons, by out there? On this land or in the neighborhood?

Q. Yes, in the neighborhood and in respect to that land. A. There was not a single house that I know of on this land.

Q. I am not speaking about houses. I am speaking of street improvements of any kind, such as water, light, pavements, sidewalks. A. There were no streets on the land except those projected streets; merely lines, nothing open.

Q. I didn't say that which was projected. A. Yes, this street we call Rhode Island Avenue was open and yet impassable for vehicles, but it was well defined as to its lines. We spent several hundred dollars in having impassable places filled in so our second row of houses could be reached from 4th Street.

Q. You mean those on the south side? A. Yes.

Q. Were any of these streets open at all besides Rhode Island Avenue? A. They may have been marked off on the plat, but they were not streets in any sense of the word.

Q. No improvements at all? A. Not on this land.

Q. I intended to ask you this: You said that a part of this land was being farmed. Which part of it, Mr. Campbell? A. The part south of Rhode Island Avenue and next to the steam railroad.

Q. Will you indicate on the plat, please, which part of it? A. I should say——

Q. Indicate. Show me. Point out where you mean. A. Right in here (indicating).

Q. You mean to say from the railroad west to 6th Street and south of Rhode Island avenue was being farmed? A. Most of it.

Q. Who was farming it? A. Mr. Smith. It didn't go clear up to Rhode Island Avenue, and it didn't go clear up to the corner next to the railroad, but the best part of it was being farmed.

Q. You cannot define more specifically than that how much of it was being farmed? A. No, sir.

Q. You stated in your examination in chief that it never was contemplated under this contract of October 23rd, to build more than ten houses, and that the construction of the ten houses that you did construct would carry the fixed charges upon the property. What did you mean by that? A. I meant that our ideas in regard to the number of houses that were to be built was expressly stated in the contract.

Q. Which contract? A. The contract dated October 23rd, 1902, but actually executed November 27th or 28th, 1902. That contract specifies that there would be five houses built——

Q. I am not asking you what the contract specifies. I am familiar with it.

(Preceding question read to the witness.)

Mr. RIDOUT: Mr. Campbell, I instruct you that whenever you are interrupted so as to inconvenience you in such answers as
125 you feel disposed to give, you are at liberty to insist upon an opportunity being given you to give a complete and uninterrupted answer.

A. The contract specified that there were to be five houses built,

but after we built the five houses we concluded to go ahead and build five more on the theory that ten houses would carry all the fixed charges on the property and leave a surplus. On that theory we proceeded to build ten houses, and it was never contemplated that we would build more than that.

Q. Have you completed the answer you wished to give? A. Yes.

Q. Now, I will ask you to answer my question. I want to know what you mean by the fixed charges upon this property. A. The fixed charges were interest on the Franz trust, the taxes on the property and the interest on the building loans.

Q. How much has been received by either the Northwest Eckington Improvement Company or yourself from these ten houses? A. I don't know, sir.

Q. Do you know how much you have received? A. I haven't received anything.

Q. Do you know if the Northwest Eckington Improvement Company has received anything? A. Not to my knowledge.

Q. As a matter of fact, under the terms of the loans that you obtained, the rents derived from these ten houses were to be applied to the payment, not only of the taxes accruing on those houses and the interest on those mortgages, but also towards the reduction of the principal? A. Yes.

Q. And that was the agreement actually made? A. Yes, sir.

Q. And under that agreement none of the rents or profit of those houses have in fact been received either by you or by the Northwest Eckington Improvement Company, have they? A. Not as yet.

Q. So that, thus far these ten houses have not carried any of the fixed charges represented by the Franz trust, or the taxes on any part of this property except the ten houses? A. No, sir, and will not until a certain reduction is made on the building loans, $5,000.

Q. Going back chronologically, you testified in your examination in chief that the discount of $2,000 that you obtained from one of the banks here, and on which note Mr. Daniel became your endorser, was obtained by you, as I now recall your testimony, in September, 1902, I think it was. Were you not in error on that? A. No, sir.

Q. Is it not a fact that the discount in question had been obtained as early as March, 1902? A. No, sir.

Q. About or immediately after the making of the first contract under which the Sanitary Dwellings Company proposition was produced? A. That is Mr. Daniel's testimony, but it was not correct.

Q. You say that no such discount was obtained? A. No, sir.

Q. Now, when was it that it was obtained? A. It was obtained September 22nd, 1902.

Q. That was the first time? A. Yes, sir.

Q. And that was for your personal use? A. Yes, sir;
126 paid out the same day to the Standard Brick Company, I believe, for my personal use.

Q. And when was that paid off, Mr. Campbell? A. It was paid off the subsequent year. I cannot recall the date.

Q. There were some renewals, were there not? A. Yes.

Q. Have you those notes or renewal notes? A. I have them in my possession.

Q. I am going to ask you to produce them, if you will, at a subsequent session of the testimony? A. I will.

Q. When did you obtain estimates for the building of the first five houses under this contract. A. In December, 1902.

Q. From whom did you obtain your first estimate? A. I obtained the first estimates from all the sub-contractors, two or three estimates on each sub-contract.

Q. I say, from whom did you obtain the first? A. I cannot recollect from whom I obtained the first.

Q. Did a man or firm named Fahey & Co. give any estimates? A. Yes.

Q. What for? A. Cement work and foundations.

Q. And when did you obtain the estimates from them? A. I cannot tell you.

Q. Approximately? A. I presume in December, 1902.

Q. When did you begin or cause to be begun the excavations for those first five houses? A. I think about the end of December.

Q. Not before? A. No.

Q. Then you did not pay Fahey & Co. anything before that time? A. Fahey & Co. had the first work to do on the excavation.

Q. That is what I am talking about. I understand you to say that that was commenced in the end of December, 1902. Is that correct? A. That is my recollection.

Q. Now, what was their estimate? A. I cannot recall without a memorandum. I think it was $1,260.

Q. Was their estimate in writing? A. I presume it was.

Q. Have you got it? A. I don't know whether I have or not.

Q. Will you look to see? A. Yes.

Q. And produce it if you have it? A. Yes.

Q. Were Fahey & Co. engaged *in* that time, December, 1902, in any other work for you? A. No, sir; not that I recall.

Q. Had they been? A. They had been in the six or eight months before that, the preceding spring and summer.

Q. Of 1902? A. Yes.

Q. On what work? A. On Harvard Street and Columbia Road.

Q. Those houses were not completed in December, 1902, were they? A. Yes, they were completed before that except some inside finish.

Q. They were not completed then? A. They were delayed quite a little bit—the finish. They were left over the Holidays. With that exception they were completed in the late December of 1902.

Q. What work did Fahey do on that contract? A. He did the excavating and putting in the foundations early in that year.

127 Q. Whose was the next estimate which you obtained? A. I don't know what you mean by that question.

Q. From whom did you obtain the next estimate for this job? A. I told you all the estimates were obtained at the same time, several estimates on each sub-contract.

Q. You surely don't mean that? A. I do mean that.

Q. How did you succeed in obtaining them all at the same time? A. I sent the plans around and had each man estimate on his portion of the work.

Q. So these estimates were all in writing? A. Some of them were and some of them were not?

Q. Which were? A. I cannot recall.

* * * * * * *

Q. Now, I am going to ask you, Mr. Campbell, to look for all of these estimates about which you have been asked, that are in writing, and produce them at a subsequent session, please. A. All right, sir.

Q. Now, recurring to the answer you gave a little while ago, you said that the excavating was commenced about the latter part of December, 1902, if I recollect correctly. Is that right. A. Yes, sir.

Q. Of the men that you have named as supplying material for the construction of this first row of houses which of them were supplying, or had supplied, you material for the building operations on the hill, your own building operations on Harvard Street and Columbia Road. A. The Standard Stone Company, the Galvanized Iron man and the slater.

Q. And Fahey & Co.? A. And Fahey & Co.

Q. Anyone else? A. And Mr. Cowell, the bricklayer.

Q. What was Wallace'- connection with the first row of houses? A. He was employed by the day to represent the owners.

Q. In what way? A. As a carpenter.

Q. You mean, did the carpenter's work? A. He worked on the carpenter's work by the day and was paid by the contractor as one of his hands.

Q. One of the carpenter's hands? A. Yes. There was a certain amount, a surplus, paid by us. We paid him, I think, $2.50 a day. I think Keys paid him $2. a day and the rest was made up by us.

Q. What was the object of your employing a carpenter if you had a sub-contract for the carpenter's work? A. It was very important, I thought, to have a reliable man on the job watching it constantly, representing us, and at the same time not costing us anything, or very little.

Q. Watching it in what way? A. Watching it in every way. He was a practical mechanic.

Q. You mean, then, that he watched all the various materials and the men at work. A. And watched the men to see that they did their work right.

Q. All of them? A. Yes.

Q. All the material men? A. Yes.

128 Q. And if they didn't do it right, what was he then required to do? A. He was authorized to report it to me or correct it on the spot.

Q. Then, he was a sort of superintendent on the job? A. Yes, sir; at the same time his wages were paid by the contractor.

Q. And how much did you pay him over and above what he got

from this carpenter contractor? A. I don't know how much it amounted to.

Q. You paid him, did you not? A. Yes, sir. I know the total amount I paid him, but how much I paid him over and above what he received from the other man I cannot recall.

Q. You had no arrangement as to how much he should receive per day? A. Yes, he was to receive $2.50 a day from us, that is, we were to guarantee him $2.50 a day, and I believe that Keys, the contractor paid $2. of it. So the plan was that we secured a superintendent there without costing us anything, or practically nothing.

Q. And you only paid Wallace fifty cents — day? A. I believe that was the amount.

Q. Fifty cents a day for superintendening the building of the first row of houses? A. No, sir; I didn't put it that way. I said we paid him fifty cents a day of the wages he received.

Q. For superintendence? A. Yes, but he got more than fifty cents a day.

Q. I say for the superintendence? You paid him fifty cents a day; isn't that correct? A. Oh, he received more than that. That was part of his pay.

Q. How much did you pay him for his superintendency? A. I have already answered about fifty cents — day.

Q. On August 1st, 1902, you say in this statement of account, a statement of checks, as you call it, that you paid Fahey & Co. $83. What was that for, Mr. Campbell? A. What statement of account?

Q. The statement of checks, you call it. It is here in the exhibits. (Showing witness Complainants' Exhibit No. 7, August 1st.) A. That has been corrected and stricken out. It is probably an error.

Q. Do you mean it ought not to have appeared in this statement? A. That is my impression.

Q. I don't want your impression. I want what the fact is. A. I connot give you any more information than that. That was simply a list of checks, and it was the easiest thing in the world to make an error in copying off a list of several hundred checks.

Q. Do I understand you did not pay Fahey & Co. on August 1st, 1902 $83, which was properly chargeable to this enterprise? A. You do not understand anything of the kind. I did not state that.

Q. What does this entry mean? A. I don't know.

Q. You cannot tell anything about it? A. I could by looking at my books. I could not charge my mind with everything.

Q. That is charged against the Northwest Eckington Improvement Company. A. No, sir; it is not.

129 Q. What is it charged against? A. That is a list of checks.

Q. Of what? A. Supposed to be the checks paid out on account of the Northwest Eckington Improvement Company enterprise.

Q. Is it? A. There are some errors in it.

Q. Is that one of them? A. I presume it is, yes. There are other errors I can point out.

Q. I am glad to know it, if you can. On November 28th, 1902, you have here an item of $200, Fahey & Co. A. What date is that?

Q. November 28th. Now, this item of November 28th, $200, what was that? A. That is probably an error.

Q. When you say probably an error, do you mean not to be charged against the Northwest Eckington Improvement Company? A. It was not charged against the Northwest Eckington Improvement Company when the account was made out.

Q. You said a few moments since that this was a statement of payments made on account of the Northwest Eckington Improvement Company, did you not? A. On the contrary I said it was nothing but a list of checks in which there were several errors.

Q. Checks for what? A. A list of checks paid out on account of the Northwest Eckington Improvement Company. It was expressly stated when it was left——

Q. Do I understand that this item of $200. is one of those errors? A. I presume it was.

Q. And that you did not pay out on November 28th to Fahey & Co. $200 on account of this enterprise? A. No. On the contrary I did pay it out, if it is there. It is probably not paid out on that job. It is *is* probably a payment made on the other job.

Q. What other job? A. On the Harvard Street job.

Q. Now, were you submitting a statement to the Northwest Eckington Improvement Company or Messrs. Daniel and Redman showing payments made on account of your private operations? A. I first brought all the checks into Mr. Daniel's office, showing the confidence I had in him, and left it to him to draw off the list of checks. But it was thrown up there as too big a job, and I attempted it myself. I am not a bookkeeper and never professed to be one. I told Mr. Daniel I was not one. And in copying off the list of checks I made some errors, and I told him at the time there were probably some errors in the list. I told him that at the time I brought it down to have it checked off.

Q. This statement, whatever it may be, Mr. Campbell, shows on the last page apparently a balance struck, a net balance is on the wrong side as against the Northwest Eckington Improvement Company of $4,233.94. That balance, was it correct or not? A. No, sir. You also observe that statement is not called an account at the head of it.

Q. What money did you pay out up to and including December 31st, 1902, to material men or laborers on the first row of houses on the north side of the street, Rhode Island Avenue? A. I don't know, sir.

Q. How many payments had you received on account of
130 the first building loan up to that day, December 31st, 1902?
A. I don't know.

Q. And how much did that aggregate? A. $5,500.

Q. Did you pay out any money to material men or laborers up to and including December 31st, 1902? A. Not very much.

Q. How much, approximately? A. I cannot recollect.

Q. Can you tell in any way? A. I suppose I could by going back over the checks books.

Q. I will have to ask you to do it, and produce your checks, if you paid them by checks, and also the succeeding month of January, how much you paid out, and so with each month until the row was completed. A. All right; I can give you that.

Q. We will first take December. A. Up to December 12th, 1902 I paid out altogether $4,152.06.

Q. I am not asking you that. A. Up to December 23rd I paid out practically the same.

Q. What are you reading from? A. I am reading from a statement of account that I very carefully compiled.

Q. From what? A. From my own accounts that I propose to submit to the Auditor if this case ever gets that far.

Q. From what is it made up? A. It is made up from my accounts.

Q. What accounts? A. My accounts that I propose to submit to the Auditor if I ever get that far.

Q. What are the bases of these accounts? Books? A. No, these accounts are checks and vouchers.

Q. Then you have gone over your books and vouchers and made up this account? A. Yes.

Q. Then you have segregated them, have you not? A. Yes.

Q. And you can produce these checks, can you? A. Oh, yes.

Q. Then I don't care for your memorandum statement of account. I will ask you to produce your checks. That is what I am asking you for. A. Well, those checks are very voluminous, Mr. Siddons.

Q. I know that. I am sorry they are so, but I cannot help it. So you cannot give me that information except from this memorandum that you have compiled as you have stated—tonight, I mean? A. No, sir.

Q. Then I don't care for your statement of account. Before the Summer of 1902, or to take the date you prefer, before Ross made his purchase out in the neighborhood of where this land lies, for warehouse purposes, I understood you to say in your examination in chief that you had proceeded on the theory of building residences only on this property in dispute here? A. Yes, sir.

Q. And up to the time of Ross's purchase, if I remember correctly, you also stated that the railroad situation was very nebulous, to use your language? A. Yes.

Q. But it was not so nebulous to make these statements regarding what the railroad was going to do, in the prospectus, and the Sanitary Dwellings Company? A. I have explained to you already, Mr. Siddons, that it was nebulous in the sense that we did not know what the railroad was going to do. They might put a lot of
131 car tracks along that property and make a yard out of it and thus ruin the property.

Q. Whatever the railroad was going to do, you had made a care-

ful study of that proposition before you entered into the contract of October 23rd, 1902, hadn't you? A. Yes, sir; rather careful.

Q. And you had made up your mind that they were going to do a great deal out there? A. I was not sure of it. I took my chance on it.

Q. Well, you were so sure that in May, 1902, you had made this statement and circulated it in the prospectus of the Sanitary Company, were you not? A. Yes, largely under the inspiration of Brother Daniel who was a great boomer of the property.

Q. That looks like as if you were a boomer of the property at any rate, whether Mr. Daniel was a boomer or not. You, yourself, studied the railroad proposition, did you not? A. Yes, sir.

Q. And you made up your mind, whether correctly or not, pretty definitely about that railroad proposition, as early as May, 1902? A. I believe I answered all those questions Mr. Siddons, as definitely as I care to.

Q. And that is the only answer you care to give now? A. Yes, sir.

Q. You believed, did you not, that in consequence of these railroad developments this property was going to enhance very greatly in value, didn't you? A. No, I didn't believe it. I hoped it would. I was very far from believing it. I was not sure of it.

Q. Your object was so well defined that in May, 1902, you had made this public statement in the prospectus of the Sanitary Dwellings Company? A. I believe I have already stated I did.

Q. And your hope grew, did it not? A. Yes, after the Ross purchase very materially.

Q. And even before? A. It was quiescent before.

Q. But not so quiescent that in October, 1902, you were willing to enter into this additional contract? A. Only after a great deal of reflection.

Q. But you did give it a great deal of reflection, and as a result of that reflection, and your study of the railroad proposition—— A. And the seductive utterances of Mr. Daniel.

Q. You may include that if you please—you entered into this contract of October 23rd, 1902? A. Yes, sir.

Q. When did these seductive utterances of Mr. Daniel commence to have their influence on you, Mr. Campbell? A. He kept at it all the time. I cannot recollect.

Q. When did they begin, approximately? A. They began the preceding Autumn.

Q. That is the Autumn of 1901 and 1902. A. Not 1901 and 1902; 1901.

Q. It was in 1901 when he first broached this subject to you? A. Yes.

Q. That he began his seductive representations about the railroad proposition? A. Yes.

132 Q. And that kept up on Mr. Daniel's part until October, 1902, did it Mr. Campbell? A. Yes, and afterwards.

Q. Bearing in mind the statement you have just made of Mr. Daniel's seductive representations to you about this railroad propo-

sition and this property, which began in the Fall of 1901, what did you mean by saying in your examination in chief that Mr. Daniel told you he was very much discouraged about the property? A. He told me that before I—after my first refusal to go in with him, between my first examination of the property and the time that the Sanitary Dwellings Company plan was worked out.

Q. Then he did not take so roseate a view of it at that date? A. He was very despondent between the time when I refused to go in on his first showing me the property, and the later date when the Sanitary Dwellings Company plan was developed.

Q. So his seductive representations did not continue? A. Yes. It was not a case that he did not want to keep the property, but he was discouraged in his inability to keep it.

Q. It was still a good property and had large possibilities? A. I think he thought it a good property.

Q. And you did too? A. I have already answered that question two or three times.

Q. I don't recollect it. What was your answer? A. You asked me several times what I thought of the property and when the railroad developments came along.

Q. I haven't asked you yet what you thought of the property. I am asking you now what you thought of the property? A. I thought the property at the time he first showed it to me had no attraction at all, that is with the trust on it which amounted to over $3,300 per acre, and that with back taxes and interest I thought was all the property was worth.

Q. That was in the Fall of 1901, was it not? A. Yes.

Q. And when did you change your views? A. And consequently I did not entertain his proposition which was for me to come in and buy an interest.

Q. When did you change your views, Mr. Campbell? A. I changed my views, I presume prior to the making of the contract of March, 1902.

Q. And what caused you to change your views? A. The better proposition he made me.

Q. In regard to the proposition embodied in the March contract? A. Yes. That was a much better proposition than the first one he made me.

Q. So that the property itself did not prove any more attractive to you than in March, 1902, but his proposition to you did; is that it? A. No, I hadn't given the property much thought during the interim.

Q. When did you begin to. A. I think I answered that two or three times.

Q. I didn't think you had. A. I gave it attention when I entered into the contract in March, 1902.

133 Q. So, without giving it very much consideration, you entered into the contract of March, 1902 A. Not a great deal of consideration in length of time.

Q. I don't care about the kind. We can crowd a good deal of consideration in a very short time. What was the quantum of con-

sideration that you gave him, Mr. Campbell? A. The necessary consideration to carry conviction.

Q. Conviction of what? A. That the contract of March, 1902, was a proper contract for me to make.

Q. And that conviction was based upon what? A. Based upon the proposition he made me, that is, that it was a good proposition.

Q. The property was a good property? A. I mean his proposition was a better proposition than the first one.

Q. I am endeavoring to get your view of the property. A. My view of the property was very poor in 1901 on account of the size of the mortgage that was on it. The property next to it had sold for less than his property was mortgaged for, and the property below was much better property in every way, as testified to by Mr. Ross.

Q. Now, we will come back again, Mr. Campbell. In March, 1902, you were convinced it was a good property, were you? A. I was convinced it was a good proposition.

Q. Now, have you any view at all about the property A. Yes, I have just told you my view of the property.

Q. No, you haven't yet told me your view of the property. You told me your view of the proposition. I want to know your view of the property, whether it did not incur a marked change. A. In March, 1902, I had grown to think more favorably of the property.

Q. Why? A. Through the constant repetition of his views by Mr. Daniel, and through the publications in regard to the possible railroad developments in that neighborhood.

Q. So, in March, 1902, when you made your contract, you had given the property a good deal of consideration in point of quantity, based in part at least on what you learned of the railroad probability—you might put it in this way, of the probabilities of the railroad development. A. Yes, sir.

Q. Now, the proposition that was incorporated into the March, 1902, contract, was the one which I understand you to say Mr. Daniel made to you? A. Well, the general proposition, the way the property might be saved came from me to him, but he took it up very eagerly and was anxious that the plan be tried.

Q. You have referred several times in the last ten minutes to the better proposition that Mr. Daniel made to you? A. Yes, sir.

Q. I will ask you if that proposition that you refer to, is the proposition incorporated first in the March, 1902 contract? A. Yes, sir.

Q. Now, is it not a fact that instead of Mr. Daniel's making that proposition to you, you made it to him? A. I have just answered that. I told you that I suggested the plan to him as a possible way of working him out from under a lot of debt, and he caught at the idea very eagerly.

Q. And he made you no proposition A. Yes, he did.

134 He proposed to me that if I would go in with him in the plan and work it out as soon as possible, he would give me a one-third interest in the property.

Q. You are speaking now of the March, 1902, contract? A. Yes.

Q. And he made that proposal to you? A. Yes.

Q. And you planned out how it should be done? A. I suggested to him in the first place the general plan, yes.

Q. Mr. Campbell, since we began to take testimony in this case, or since you began to take your testimony, have you had an account stated of your matters in connection with this enterprise? A. No, sir.

Q. You stated a little while ago that you had an account made up, or you had compiled an account, did you not? A. Yes; but not since the taking of this testimony began.

Q. When was it done A. It was done last May.

Q. And none since? A. Oh, it has been figured over since—examined.

Q. What do you mean by that? A. I mean I examined it critically.

Q. Did you make any change in it? A. I changed it but very little. I shifted one or two items.

Q. You stated in your examination in chief that the outstanding obligations on account of this enterprise was about $2,000, did you not? A. No, sir; I don't remember saying that.

Q. What did you say about that? A. I cannot recollect. If that is stated there it is an error. I want to correct that. I believe since the settlement of the Riley note that the aggregate is about $2,000.

Whereupon an adjournment was taken to meet subject to agreement.

FRIDAY, *March 31st*, 1905—7.30 o'clock p. m.

Met, pursuant to adjournment last noted.
Present: Same counsel.

Whereupon CHARLES M. CAMPBELL resumes the stand for further cross examination.

By Mr. SIDDONS:

Q. Mr. Campbell, have you with you the checks and vouchers that I called for at the previous session of the taking of this testimony? A. By advice of counsel I decline to produce these checks at this time solely because:

a. They are very numerous, there being at least two hundred of them;

b. They are important vouchers to my account and if lost, of which loss if now produced there is great danger, they could not be replaced;

c. Detailed examination upon them at this time would involve consumption of a great deal of time and would also cause great expense and would serve no really useful purpose.

d. It would in all probability involve duplication of a
135 large amount of work if, as is probable, the case goes to the Auditor.

e. I have prepared an elaborate and detailed account fully sup-

ported by vouchers which I am prepared to maintain in minute detail and item by item before the Auditor, but such an investigation obviously can not be usefully nor effectively now entered upon in this form of examination.

For these reasons and no other I decline now to produce these checks.

Mr. SIDDONS: The witness, Campbell, having declined to produce the checks and vouchers called for, I request the Examiner to certify my request and the witness' refusal, to the Equity Court for its determination of my right to have these papers produced in view of the testimony given by the witness both on his examination in chief and his cross-examination so far as it has gone.

Whereupon the Examiner hereby certifies the request of counsel above stated, to the Court for the determination of the matter.

JOHN A. SWEENEY,
Examiner in Chancery.

WEDNESDAY, *April 5th*, 1905—7.30 o'clock p. m.

Met pursuant to agreement of counsel at the same place to continue the taking of testimony in above entitled cause.

Present: Mr. Siddons on behalf of the complain-t and Mr. Ridout on behalf of the defendants.

Whereupon CHARLES M. CAMPBELL resumes the stand for further cross-examination.

By Mr. SIDDONS:

Q. Mr. Campbell, recurring to the paper that has been variously described as a statement of account and a statement of checks, how did you happen to make and present that to Mr. Daniel? A. Well, I have made a statement to him and I thought that the enterprise was in my debt about $4,000, and this was simply a preliminary step to ascertaining what the amount was.

Q. It was, then, a statement designed to substantiate the claim that you had previously made that you advanced something more than $4,000 on account of this enterprise? A. It was simply a preliminary step. I expected to check that statement off and verify it, as I included checks.

Q. What do you mean by a preliminary step? A. I mean it was simply a first draft of the checks—the first step towards getting up an account.

Q. What checks? A. Checks that had been paid out on this enterprise; and then in drawing up the checks some mistakes were made.

Q. Now, that preliminary statement or statement of checks, call it what you please, does show at the end, does it not, a balance of something in excess of $4,000? What did that balance, or what was it supposed to, represent, Mr. Campbell? A. Well, it was not a
136 balance in any true sense of the word, because the account was not introduced as being an account on the first page. I left it off on purpose.

Q. You told us that several times, but what I want to know is what those figures, showing something over $4,000, were designed to mean. A. They were designed to indicate a rough balance.

Q. Of what? A. Of what the enterprise was indebted to me.

Q. Then, if I understand you, the object of handing in this paper was to show roughly the balance, or give the rough balance, of what you claimed this enterprise owed you? Is that correct? A. No; I cannot accept that as a correct statement, because when I laid the list down on Mr. Daniel's desk I called his attention to checks that I had included in this list that were manifestly erroneous.

Q. You repeated that several times. A. You asked the question several times also.

Q. I am trying to find out what that was and what was its purpose. That is the only answer you can give as to that, Mr. Campbell, is it? A. Yes, sir.

Q. That was asked of you, was it not? A. No, sir

Q. You volunteered it? A. Yes, that is my recollection.

Q. And there had been no preliminary request by Mr. Daniel or Mr. Redman or by anybody else for any statements of account of any kind from you; is that correct, Mr. Campbell? A. That is responsive——

Q. Please answer the question, Mr. Campbell.

Mr. RIDOUT: Don't interrupt him.

(Question read to the witness.)

A. Never has there been a single one.

Q. And this was a purely voluntary act on your part in producing this statement, whatever it was? A. Yes, that is my recollection. I was advancing money to the enterprise.

Q. You have already answered that.

Mr. RIDOUT: You have a right to answer any question in your own way. (To the witness.)

A. (continued). And he seemed to be perfectly satisfied for me to keep on doing it.

Mr. SIDDONS: I move to strike that out as not responsive.

A. (continued). I cannot recollect that he ever made a demand for an account, but on the contrary I did make such a demand of them in writing.

Q. That demand of yours for an accounting that you claim you made, is that the one that is copied into the record on page 30 of the Complainant's testimony? I will read it to you and you can verify it if you wish to: "Mr. Daniel and Mr. Redman, the state of the Eckington account ought to be stated to see how much has been advanced by C. M. Campbell." A. That is what I referred to. That is one of the times when I made a demand in writing.

Q. Did you ever make any other? A. I suggested to him in writing that an account should be stated.

137 Q. That is after we had gotten into this case? A. That was before the suit was commenced.

Q. After the controversy? How could they, Mr. Daniel and Mr. Redman, make a statement of the account to you? A. They could not make a statement of the account to me, but we could join in making a statement of the account.

Q. How so? A. Because he was perfectly familiar with the enterprise and should be satisfied at every step when the attempt was made to state the account.

Q. Now, when you say you demanded an accounting of them, as I now understand you, you mean that the three of you should attempt to get together and make one up. A. Not attempt to get together, but get together.

Q. The attempt must come first. That is what you mean? A. Yes.

Q. And that is the statement of account that you demanded? A. That is the statement of account in which we were all interested.

Q. And when was that made, Mr. Campbell A. In making the statement of the account——

Q. I mean this demand; when did you make this written demand I just called attention to. A. The 10th of December, 1902.

Q. The 10th of December, 1902? A. Yes, sir. The date I have accurately ascertained from a typewritten memorandum that I have.

Mr. SIDDONS: I move to strike that out as utterly irresponsive.

Q. Was that demand of yours upon Messrs. Daniel and Redman made contemporaneously with the presentation, or what you call the presentation of an extended contract to them? A. I don't know what you mean by an extended contract.

Q. I don't know either. That is your characterization of it. A. That was made about the time the deed was prepared.

Q. The demand was? A. Yes, sir.

Q. And that was the same time that you presented this extended contract? A. Yes. I know what you refer to. The extended contract was presented first.

Q. When was it presented? A. Well, just a few days before.

Q. A few days before you made your demand for an account? A. A few days before I presented the deed to them and this demand.

Q. So that the order in which these things occurred was this, as I understand you: You first presented the extended contract, a few days afterwards you made a written demand on them for an accounting, and a few days after that you got a deed from them? Is that the order? A. I cannot remember the exact chronological order, but they all occurred about the same time; and the extended contract, I am not aware that I used that phrase when I spoke about the contract, although that is correct.

Q. You are quite sure about the dates, Mr. Campbell? A. I am quite sure, because the contract was prepared with the date in it by Mr. Ridout, December 10th, 1902.

Q. The contract that you proposed? A. Yes.

Q. And that you think bore date December 10th, 1902?

138 A. Yes. Mr. Daniel stated that it was presented the following July, but it was presented the 10th day of December,

1902; and the date was written in and it was all prepared for signature on that date; and I have the contract now, made by Mr. Ridout's typewriter.

Q. And that is the contract that he refused to sign? A. Yes; but he says it was presented to him in the following July.

Q. That is the contract, I say, that he refused to sign? A. I guess, so, yes.

Q. What accounting was there necessary on December 10th, 1902. between you and these gentlemen? A. An accounting for money advanced by me to the enterprise up to that date.

Q. Up to the date of December 10th, 1902? A. About that date, yes.

Q. How much had you advanced up to that time, approximately? A. I haven't the memorandum with me to-night showing the exact amount up to December 10th.

Q. Can you give it to me approximately? A. No, I cannot give it to you. I have it at home but I haven't it here.

Q. This contract which you presented on page 22 of your testimony, Mr. Ridout was interrogating you, and he says, Did you take any further action? And your answer is: Yes. I presented an extended contract to Mr. Daniel that had some additional provisions in. Question. Have you that paper? Answer: Yes, sir; I have that paper (handing paper to counsel). Question: What was the date of the presentation of that paper to Mr. Daniel? Answer: December 10, 1902. Have you that paper that you referred to there, Mr. Campbell? A. No, sir; I haven't it with me now.

Q. I will have to ask you to produce it. It is referred to by you on page 22 of your testimony. A. All right, sir.

Mr. RIDOUT: Counsel for Mr. Campbell advises counsel for complainants, that a response to his call will be equivalent to an offer of that paper in evidence by him.

Q. Recurring now again to this statement of account, list of checks, or preliminary statement, under date of January 13th, 1903, Mr. Campbell, there is a statement pertaining to A. M. Cowell, sand, $175. Did you make a payment to him on that day for that amount? A. I think that was a payment of a note that had been given. I cannot recollect now.

Q. There is your paper. Just turn to that now (handing paper to witness). A. I cannot recall what that is.

Q. Let me refresh your recollection if I can. Was not that in payment of a note that you had given the previous November to Mr. Cowell in settlement of some work which he had been doing for you on your Columbia Heights job? A. Is that one of the items I eliminated in my correspondence with you?

Q. I don't know. A. I eliminated a number of items. There were several errors in the list, Mr. Siddons, and I cannot recall whether that was one of them or not.

Q. What is your best recollection about it. A. I don't know that there was such a note as that passed.

139 Q. You either do or don't recollect. You mean you don't recollect? A. It was probably for a sand note and you are probably correct about it, but I would not state positively.

Q. I wish you would turn to some payments, items appearing there, under date of July 17th, all Cowell claims. A. Yes.

Q. There is a payment on July 24th to Cowell of $100. A. Yes.

Q. Another on July 31st of $100? A. Yes.

Q. Another on September 17th of $100? A. Yes.

Q. And another on October 15th of $100? A. Yes.

Q. Mr. Campbell, were those not errors too, and should not have been included in any statement made to the Northwest Eckington Improvement Company or Messrs. Daniel and Redman. A. What is the aggregate of those items?

Q. $400. A. Are those the items that I claim I paid Mr. Cowell to be credited on Eckington work, and he credited on my job on the hill?

Q. I don't know what your claims are. A. I think they are, and those sums were paid to Mr. Cowell.

Q. They so appear in your statement. A. And on account of the Eckington job.

Q. Now, Mr. Campbell, if you will turn to an item of September 6th, Cowell, $400. A. All right, sir.

Q. Isn't that an error? A. Not an error in the payment. There is an error in the date of the check. By examination of the back of the check it will be seen that it was paid February 6th instead of September 6th.

Q. February 6th? A. Of the succeeding year.

Q. February 6th, 1904? A. No, February 6th. I don't know the year.

Q. Isn't that 1903? A. I have the check right here (examining checks). There is the check inserted under February 6th, its proper date (handing to counsel).

Q. You mean the check was drawn and paid in February, 1903? A. It was simply an error in the date of the check. There was somebody probably talking to me when I drew it up. It was written September when it should have been February 6th. The stamp on the back shows it was paid February 7th, and the receipt of the money is acknowledged by Mr. Cowell.

Q. In your statement you have that charge, $400, on February 6th, have you not? A. Yes; it is charged under February 6th and in my written account I see I have stricken it out under date of September 6th.

Q. Not stricken out from the account you gave these gentlemen? A. It is in this list of checks.

Q. Then, I understand that while an item of $400 appears twice on that statement that you submitted to these gentlemen, one under date of February 6th and the other under date of September 6th, only one of those items ought in fact to have gone into that statement, that of February 6th? A. Yes. The February 6th item I think I got from Mr. Cowell's account, although I don't recollect

now. But anyhow, I discovered the error and in my regular account the item of September 6th is stricken out.

140 Q. When you speak of your regular account, you are referring to that memorandum that you have read from, or statement that you read from once or twice since you have been on the stand? A. I haven't prepared my full account yet. It is simply a memorandum.

Q. That is what you are referring to? A. I am referring to the memorandum.

Q. When you speak of the regular account as referring to your statement, what are you referring to? A. I am referring to an account I made out last May.

Q. Isn't that the one you have been reading from? A. No, that is not the one I have been reading from.

Q. Well, some other account you made up for your own purposes and use? A. Yes.

Q. Now, if you will look under the head of June 29th you state a payment there to Mr. Cowell of $36. A. That is an error and is properly stricken out.

Q. It does not belong there? A. It was paid off.

Q. But not on this account? A. But not on this account.

Q. You stated in your examination in chief, Mr. Campbell, that when the contract of October 23rd, 1902, was made or at the date of the contract, which is October 23rd, 1902, you had expended on the Sanitary Dwellings experiment some $481., as I remember? A. Yes, sir.

Q. And that you had also paid out $500. which was applied to the Franz trust? A. Yes, sir.

Q. Up to that date that represented your own advancements on account of this undertaking under the Sanitary Dwellings contract—— A. Up to what date?

Q. October 23rd, 1902. A. No, sir. I also paid taxes on June 26th of $122.91 which I thought at the time were all the back taxes. And I afterwards found there were about ten years' back taxes due, amounting to $957.55 in addition to the $122.91.

Mr. SIDDONS: I move to strike out so much of the answer of the witness as undertakes to give his thoughts and what he subsequently found out.

Q. Then, when you said the other day that you paid $981., it now appears that that was not correct. A. What was it I said?

Q. You just now said you paid out $122.91, as I understand it? A. Yes.

Q. What did you mean when you said in your examination in chief that you paid out $481. and $500; what were you referring to? A. The $481. was for the Sanitary Dwellings Company. The taxes and the money paid to Mrs. Franz was in order to satisfy her in the matter of the trust.

Q. You never referred to the $122.91 in your examination in chief? A. Simply because I overlooked it.

Q. You are quite positive that on October 23rd, 1902 the total

amount of your expenditures were $500, $122.91, which you have testified about, and $481? A. Yes, sir. I think——

Q. There is no doubt about that? A. I think that is right.

141 Q. Can you be sure? A. That is sure enough. I think that is right.

Q. Then, this statement of yours, submitted to them, which shows up to October 25th total expenditures of $1,747.97 is incorrect. A. From what paper are you reading.

Q. I am reading from a copy of your statement that you have here. A. Prepared by whom?

Q. It is in the exhibit, prepared by the stenographer in my office. You have the statement there.

Mr. RIDOUT (to the witness): I advise you that you are not obliged to answer any question based on any statement made by Mr. Siddons' stenographer.

Q. You have it there. There it is. I gave it to you. It is up to October 25th. A. That is an analysis prepared by Mr. Daniel and it is grossly incorrect.

Q. Will you take the paper that you hold in your hand, which is a statement that you prepared and an exhibit in this case (Complainants' Exhibit 7) and tell me if it is not a fact, according to that statement, that up to October 25th, 1902 the claimed expenditures by you, disbursements, there foot up $1,747.97? What do I understand your answer is? A. I don't know what they foot up.

Mr. RIDOUT: You have a right to take your pencil and paper and find out before you answer the question.

(Question repeated to the witness.)

A. That is including an erroneous entry of $500. under June 17th. That is a duplicate of the item of June 16th, which is entered here as being paid on the trust. The reason it is entered in the statement twice is because the check was made payable to Mr. Daniel and he paid it on the trust. Afterwards I got credit for it from the trust company, and both items appear in this statement. But when I laid the statement on Mr. Daniel's desk I called his attention to the fact that it was a probable error.

Q. The item of June 17th is the erroneous entry? A. That is one. There is also an erroneous entry under July 19th of $65., which you haven't checked; and of August 1st of $83. to Fahey & Co., as I explained the other night. There are two small items, one of $5. under August 5th and one of $3.75 under July 11th that I don't recognize now. With those corrections I believe the list is correct.

Q. Who made this statement, Mr. Campbell? A. I drew it off myself.

Q. Is this your handwriting? A. No, sir.

Q. Whose handwriting is it? A. Miss Bradfield copied it from my written draft.

Q. Who is Miss Bradfield? A. She is a bookkeeper for George C. Altemus.

Q. You furnished her with these figures and names and dates?
A. I furnished her with the list just as she copied it off.
142 Q. She simply copied it off? A. Yes.
Q. Now, from what did you make the list that you prepared? A. I made it from the checks and check books.
Q. Checks and check books? A. Yes.
Q. Any other source? A. I don't recall any other source.
Q. Then, under date of June 16th you had a stub or check, whichever it was, paid on the trust, $500, did you? A. No. I will amend my last answer by saying that the credits on the trust were received through F. H. Smith & Company to the trust company itself. I believe with that exception I relied on my checks and stubs.
Q. Speaking of this item of June 16th which appears in this statement as paid on the trust, $500, was that paid from your check book? A. No, sir.
Q. What was that taken from? A. It was taken from a statement furnished me by the trust company.
Q. And the item of June 17th, T. C. Daniel, $500, was taken from what? A. That is the same payment. He wanted to pay the money in and I drew the check to his order. The credit came in from two quarters at a considerable distance of time from the time the transaction was carried out, and the two entries were made and were explained to him when this list was furnished him, as a probable error.
Q. Have you that trust company statement? A. No, sir; I haven't it now.
Q. Where is it? A. I don't know.
Q. From whom did you obtain it; I mean from what office of the company? A. I obtained it from Mr. Plant. It was simply a copy of the entries on the back of a memorandum, as I afterwards found out, that Mr. Daniel had entered in the trust company.
Q. Mr. Ridout has been asking you as to the disposition made of the proceeds of the Malnatti sale, and on page 93 he asked you, Has it all been used in that way? You previously answered it had been used in paying off the indebtedness against the property—against the houses. And then he asked you, Has it all been used in that way? And you answered, Oh, part of it was used on the Franz trust. Question: Who received the $500 deposited which was made by Malnatti at the second sale? And you answered, Mr. Daniel. Question: Has he ever returned it to the fund. Answer: No, sir. What fund are you talking about? A. When the second sale to Malnatti was made, at the request of Mr. Daniel's counsel I entered into an agreement that the total proceeds of the sale should be used in liquidating certain specified indebtedness in certain proportions stipulated in the agreement. I afterwards found out that instead of it all being used in the way the agreement specified, that Mr. Daniel had appropriated to his own use, as I was informed by Mr. Cull $500 deposit money by Mr. Malnatti. That is the source of my information and all I know about it. It was furnished by Mr. Cull to me under date of January 31st, 1905, wherein Mr. Daniel is charged with a deposit of $500 against this last sale to Malnatti.

Mr. SIDDONS: I object to this testimony of the witness and move to strike out that portion of the witness' statement as purely voluntary and not called for by the question.

143 Q. And that is the basis of that answer to Mr. Ridout in the examination in chief, that you have just stated? A. Yes, sir.

Whereupon an adjournment was taken to meet on Monday, April 10th, 1905 at 7.30 o'clock P. M.

FRIDAY, *April 14th*, 1905—7.30 o'clock p. m.

Met pursuant to agreement of counsel, at the same place, on Friday, April 14th, 1904 at 7.30 o'clock P. M.

Present: Same counsel and parties.

Whereupon CHARLES M. CAMPBELL resumes the stand for further cross-examination.

By Mr. SIDDONS:

Q. Now, Mr. Campbell these checks that you produced in response to the call made upon you, what do they represent? A. They represent money paid out on account of those houses.

Q. All of them? A. No. I found some checks since—handed those in. They were taken out of the files and scattered in different places. I haven't been able to find them all. I suppose there are ten or twelve possibly.

Q. Have you those with you? A. I haven't completed them all. I wanted to complete them all. Those were checks removed from the files and put in envelopes and various places.

Q. Then, I will have to ask you to produce the others. A. I will.

Q. Now, these papers that you produced in response to the call, what do they represent? A. They represent proposals given to Mr. Wallace. He collected all these proposals.

Q. The proposals for these houses? A. For sub-contracts on the houses.

Q. For the north row? A. I don't know whether they are for the north row or south row. Those are the only ones I have in my possession.

Q. There were no other estimates for either row except those? A. Yes; there were estimates on every sub-contract, but some of them were kept by Mr. Wallace, I believe. Anyhow those are all I have.

Q. Has Mr. Wallace any estimates? A. No. I don't know whether he has or not. He collected all the estimates.

Q. When you speak of sub-contracts, what do you mean? A. I mean the contracts for the different classes of work.

Q. They were original contracts, were they not, Mr. Campbell? A. No. We were our own contractors.

Q. Well, when you speak of sub-contracts, you mean they are the estimates of persons who offered to be contractors to you for the different classes of work in this building operation. A. Yes, sir.

Q. Take this one that you produce. (Counsel exhibits to witness

letter from Huddleston & Company, dated November 25th, 1902.) The letter reads as follows:

DEAR SIR: We will cover the mansard roofs and towers of the five two-story flats for Mr. Harry Wardman on Florida Avenue,
144 Northwest with black slate to your satisfaction for the sum of one hundred and twenty-five dollars ($125.).

Respectfully. HUDDLESTON & CO.

A. In picking up the proposals from my file case I picked this one up in place of the one Huddleston & Co. made out for us, by mistake. I don't know how it got into my files. It was probably left there by Mr. Huddleston.

Q. Now, I will have to ask you to produce the Huddleston estimate, if that is not the correct one, as I understand you. A. I will if I have it.

Q. I hand you a letter addressed to you from Thomas R. Riley, dated November 15th, 1902, and ask you if that was Mr. Riley's estimate for the first five houses. (Handing letter to witness.) A. No, sir. This does not properly belong among the estimates. I wish to explain that the estimates were all rolled up together, and I brought them along without critical examination, and I see I brought some estimates for other work than this Eckington work.

Q. Now, Mr. Campbell, are you sure you are not mistaken about that? A. I judge by the date only.

Q. Were not those the figures which you accepted for Mr. Riley? A. I cannot recollect now whether they were or not. Judging by the date it was too far back, but probably it is all right.

Q. Have you any other estimate from Mr. Riley? A. Not that I know of. I brought all the estimates down that I had left.

Q. Isn't it a fact, Mr. Campbell, that you were getting estimates in November, 1902, right along for these houses? A. I believe I was. If you say those are the proper amounts I have no doubt they are. I will compare them with some figures I have here and find out. (Witness examines papers.) This estimate does not state where the houses were located. It simply says, five houses. On a re-examination I think that that was for the Eckington houses.

Q. As a matter of fact, Mr. Campbell, though this estimate of Mr. Riley was accepted, he did not in fact furnish you with any glass, did he? A. No, sir.

Q. So that this item of $306. for glass in this estimate should go out? A. Yes.

Mr. SIDDONS: I offer this in evidence, to be marked Exhibit Defendant No. 14.

A. (continued). I believe there were some alterations in his estimates afterwards.

Q. You mean in that estimate shown you a few minutes ago. A. In his estimate for the work. There were some corrections made in his estimate.

Q. In that estimate? A. Yes, in that estimate—if that is his estimate.

Q. What corrections were made? A. Well, he added some extra work that he charged for, and he deducted for some work he didn't do. He made some corrections in fences, and made other corrections. I cannot recall them now.

Q. I show you, Mr. Campbell, a letter addressed to you
145 from the Mathy Company, dated November 24th, 1902, and ask you if that was an accepted estimate for these five houses? A. Part of it was accepted.

Q. Which part? A. The galvanized iron part.

Q. How much? A. $196.

Q. The rest was not? A. No, sir.

Mr. SIDDONS: I offer this in evidence in respect to the galvanized iron item and front spouts, $196., which witness states was the only part of it accepted, to be marked Exhibit Defendant No. 15.

Q. Look at that, and although it does not very accurately describe those five houses, don't you think that it is the accepted estimate? (Letter of Huddleston & Co. dated November 25th, 1902.) A. Well, the amount is correct. I threw it out before because it mentioned Harry Wardman's houses. I didn't read it carefully.

Q. May it not be that the writer was referring to the Harry Wardman houses that had been to some extent your model? A. Perhaps so.

Q. I will use it if you think it is the estimate? A. I think it is.

Mr. SIDDONS: I offer it in evidence to be marked Exhibit Defendant No. 16.

Q. I show you, Mr. Campbell, from the estimate produced by you two signed by Fahey & Co. and addressed to you, one dated November 4th, 1902, and one dated November 21st, 1902. The one of November 4th was not accepted, was it? (Handing papers to witness.) A. My recollection is that the first bid was rejected, and the second bid, dated November 21st, was accepted, and in addition to that there were various extras that they charged for afterwards.

Q. I observe, Mr. Campbell, that this bid of Fahey & Co. is dated November 21st, 1902, the later one, that he gives you an estimate for the first five houses of $1,050 with cellars and $545 without cellars. Those first five house were built without cellars, were they not? A. Yes, sir.

Q. And the estimate was accepted upon those last figures of his, without cellars, $545? A. My recollection is that his bid was $565 and it was a little too high and he reduced it $20.

Q. And it was accepted for $545? A. And then accepted for $545.

Mr. SIDDONS: I offer this in evidence to be marked Exhibit Defendant No. 17.

Q. Mr. Campbell, I show you a letter signed by William N. Ward and addressed to Mr. Wallace, dated December 6th, 1902, and I will ask you to state if that was the accepted estimate in his case? A. I think that was Mr. Ward's estimate. He gave me two, but I think that was the one we accepted.

Q. Have you the other? A. No; the other one was rejected. It was too low and he raised it.

Q. You rejected it because it was too low? A. No, he refused to carry it out. He told us he made a mistake in his estimate.

146 Mr. SIDDONS: I offer that paper in evidence to be marked Exhibit Defendant No. 18.

Q. Mr. Campbell, I show you a letter addressed to the Northwest Eckington Improvement Company, signed by Albert M. Cowell & Sons, dated November 26th, 1902, and ask you if that is not the accepted bid of Cowell & Sons on the north five houses? A. Yes, sir; I think that is the accepted bid.

Q. Now, I notice these words in the bid, "If cellars are added, extra $418." I understood you to say that there were no cellars put in the first five houses, so that that item of $418. was not accepted? A. The first row?

Q. Yes. We are only talking about them. A. Yes, sir.

Q. So that the accepted bid is for the two items of $4,255. and $118., leaving the item of $418. out? A. I think that is correct.

Mr. SIDDONS: With the item of $418. eliminated, in pursuance of the witness' explanation, I offer that in evidence to be marked Exhibit Defendant No. 19.

Q. I show you, Mr. Campbell, a letter addressed to you and signed by C. A. Muddiman, dated April 6th, 1903, and ask you to state what that is. A. That is a proposal he made for the ten houses for gas fixtures, but some negotiations then ensured, and he agreed to furnish the gas fixtures for $120.

Q. That was for the first row? A. I judge by the date it was the first row.

Q. What date? A. It is dated April 6th, 1903.

Q. Are you referring to this paper that I showed you? A. Yes.

Q. You say that is the estimate he offered for the ten houses? A. Then that must have been for the second row he took the contract for.

Q. Didn't he take it for both? A. No, sir.

Q. Who furnished them for the first row? A. One row was furnished by Barber & Ross and one row by Muddiman, but I don't know which man furnished the first row.

Q. I hand you a letter addressed to you, signed by Barber & Ross, dated April 17th, and ask you to state whether that is the bid for the gas fixtures for the first row? A. I think that was for the second row.

Q. Muddiman, then, furnished the gas fixtures for the first row? A. I cannot tell you which of them furnished them for the first row. They are both dated April. (Witness examines papers.) Yes, Muddiman furnished them for the first row.

Q. Now, the estimate of Muddiman for the gas fixtures for the first row was finally accepted for how much? A. $120.

Q. I show you, Mr. Campbell, a letter signed by F. W. Leanhardt on the paper of J. H. Kuehling, addressed to you and dated Feb-

ruary 16th, 1903, and I will ask you what that is? A. That is the bid for the electric work.

Q. For the first five? A. Yes.

Q. Was it accepted? A. I think it was.

147 Q. Was it not accepted with some slight modification? A. I don't know whether it was or not. I think that was about the amount.

Mr. SIDDONS: I offer that letter in evidence to be marked Exhibit Defendant No. 20.

Q. Who is Mr. Plant? A. Plant was the architect—the first architect we employed.

Q. Mr. Campbell, I show you a letter addressed to Mr. A. C. Plant, Jr., signed William J. Ray & Co., and dated October 28th, 1902, and I will ask you to state what that is. A. Mr. Plant was the first architect employed by us. He prepared plans which we did not accept as to the floor plans, but he had a friend in the tinning business that he requested to make a bid without any authority from me, in order to do a favor to his friend. This bid was turned in to him and he turned it into me. That is all I know about it.

Q. This was not a bid that was accepted at all? A. It was not a bid that was accepted. I don't know whether it was or not.

Q. You think not. A. No.

Q. I show you, Mr. Campbell, a letter addressed to you, signed, Rudolph West & Co., and dated February 27th, 1903, and ask you to state what that is. A. This states it is a hardware bid by Rudolph West & Co.

Q. Was it accepted? A. I think it was.

Q. For the first five houses? A. I think so.

Mr. SIDDONS: I offer that in evidence to be marked Exhibit Defendant No. 21.

Q. Now, I show you a letter signed by Hutchinson and Harbin, addressed to you and dated February 10th, 1903, and ask you to tell me what that is. A. Mr. Daniel ought to know. He was present and helped me secure this estimate. He passed on the mantels this man bid on—one of the art committee. This is an estimate for mantels.

Q. Was it accepted? A. Yes.

Q. This was for the first five houses? A. Yes, sir; for a certain number of houses, and this is the price on each style of mantel we selected, and we were to get as many as we wanted. We got mantels from that firm for both rows.

Q. Which style did you accept? A. We accepted all the styles.

Q. This estimate calls for No. 1, No. 2, No. 3, No. 4 and No. 5 at different prices given here. A. We accepted several of those and put numbers on them down at the factory, and afterwards ordered so many by each number. I cannot recall the number of each style we ordered.

Q. Did you select your five cabinets for the first five houses whether they were No. 1, No. 2, No. 3, No. 4 or No. 5? A. We did not select

them necessarily for one row, but we selected them in such quantities as we desired. As a matter of fact we used them on both rows.

Q. Now, you did select for the first five houses on the north side these cabinets based upon this estimate, did you not? A. We selected several out of the list, but I don't recall the ones.

148 Mr. SIDDONS: I offer this in evidence to be marked Exhibit Defendant No. 22.

Q. Now, before we go to another subject I will recur to this so-called statement of checks. That is in your handwriting, is it not? (Handing paper to witness.) A. Yes, sir.

Q. You sent that letter, did you not, to Mr. Redman? A. Yes, sir.

Mr. SIDDONS: Counsel exhibited to witness a letter dated January 6th, 1904, addressed to Dear Mr. Redman, and which he states he wrote and sent to him.

Q. Now, I call your attention to this paragraph in the letter, "I shall consult my counsel on this point but I now see no objection to it, providing a settlement is made as soon as my account is verified," and I will ask you to tell me what you referred to when you used those words, "as soon as my account is verified"; what account? A. My account on these buildings.

Q. That did not refer, then, to the so-called statement of checks which you had turned over to Mr. Daniel about a week before this letter was written? A. No, sir. I have repeatedly stated to you that I did not consider that an account.

Q. Yes, I know you have. What account of yours needed verifying at the date of the writing of this letter, January 6th, 1904? A. The account of which that was the beginning. The list of checks I submitted to him was simply a beginning towards a full statement of the account.

Q. And that is your answer, is it? A. Yes, sir.

Mr. SIDDONS: I offer that letter in evidence to be marked Exhibit Defendant No. 23.

Q. Look at that letter, Mr. Campbell, and state if you did not write and send that letter. (Handing letter to witness.) A. Yes, sir; I sent that letter.

Mr. SIDDONS: This letter which the witness has just identified is one addressed to Messrs. Ralston & Siddons, dated January 6th, 1904.

Q. That letter, Mr. Campbell, was in reply to one received from Ralston & Siddons, was it not? A. I presume so. I did not read it in reference to that point.

Q. The letter begins, "I have your statement under date of January 5th" &c. Calling your attention to those words, what is your recollection now? A. It was in answer to one of your letters.

It is agreed by counsel that the carbon copy of a letter from Ralston & Siddons to the witness, Charles M. Campbell, dated January 5th, 1904, may be offered in lieu of the original.

Mr. SIDDONS: This letter is only offered in connection with the

letter from the witness, Campbell, to Ralston & Siddons, dated January 6th, 1904, replying to the letter now offered, and which I will ask the Examiner to copy in the record.

(Which letter is as follows:)

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JANUARY 5, 1904.

Charles M. Campbell, Esq., Washington, D. C.

DEAR SIR: We have been consulted by Messrs. T. Cushing Daniel and S. C. Redman, in connection with their building transactions in Northwest Eckington upon ten lots held by you and them jointly. The statement of account that you rendered to them on or about December 21, 1903, was not satisfactory, and cannot be accepted by them as an accurate statement of the disposition of the funds which you have received in a fiduciary capacity. We are required to insist that a full statement, accompanied by vouchers, be submitted at once to us for them, or they will feel compelled to take such steps as may be needful to bring about a full and complete accounting. Messrs. Daniel and Redman further feel compelled to withhold the assumption of any further liability on account of the building transactions referred to.

We trust that an adjustment can be had immediately, which will avoid the necessity of a resort to legal proceedings.

Truly yours,

——— ———.

Mr. RIDOUT: To which counsel for the defendant objects on the grounds, first, that it is hearsay, second it is immaterial and irrelevant, and third, it is evidently written for the purpose of creating the existing litigation.

Mr. SIDDONS: I offer in evidence the letter of January 6th, 1904, addressed to Messrs. Ralston & Siddons and signed by C. M. Campbell, to be marked Exhibit Defendant No. 24.

Q. Now, Mr. Campbell, referring to this letter of yours to Ralston & Siddons, dated January 6th, 1904, I call your attention to this language in the letter: "I have your statement under date of January 5 that the account I have rendered of money disbursed from my private account for the benefit of Messrs. T. C. Daniel, S. C. Redman, and the Northwest Eckington Improvement Company," and so on, and I want to know what you refer to when you use the language, "The account I have rendered of money disbursed from my private account." A. Mr. Siddons, the word "account" is a very broad word, and is used there in the sense of a statement that had been made to Mr. Daniel. It is used there twice in two different meanings, and both of them very broadly used.

Q. I didn't ask for that explanation. I asked you what you referred to. A. In the first place I spoke there of the account I rendered, and I used the language, "from my private account" and used the expression in both phases.

Q. To what did you refer? A. I didn't refer to anything more than the accounts involved in this transaction.

Q. Is it not a fact that when you wrote that letter and used that

language, you referred to this so-called statement of checks and nothing else? A. No, sir; I don't recall the statement—I may have referred to the statement of checks, but I did not call it an account, and would not have called it an account if I had used the language accurately. It was hastily written——

150 Q. When you say—— A. Let me finish my answer. It was hastily written in a letter.

Q. Mr. Campbell, can you tell me to what you referred when you used the language that I have quoted from in your letter of January 6th, the words "the account I have rendered of money disbursed from my private account." A. I referred to the list of checks, I presume.

Mr. SIDDONS: Now, Mr. Ridout, are you able to produce, what was called for, the extended contract, so-called?

(Mr. Ridout produces paper and hands to counsel for complainant-.)

Q. What was your reason for proposing this contract? Mr. Campbell—this proposed contract which you have produced, dated December 10th, 1902? A. The object of it was to still further protect my interests.

Q. In what particular? A. I progressed far enough in the enterprise to see that I was the only one who was advancing any money. I had advanced considerable already, with the prospect of advancing considerably more, and I consulted my attorney about the efficiency of the first contract.

Q. When you speak of the first contract which one are you speaking of? A. Dated October 23rd, and I proposed some additions to it and drew this contract.

Q. And this is the one that you have testified you endeavored to get the Northwest Eckington Improvement Co., Mr. Daniel and Mr. Redman to accept? A. Yes, sir; the one I submitted to them.

Q. The one you submitted to them with a view of getting them to execute it? A. I did not use any endeavors to get them to sign it. I submitted the contract to them and they declined to sign it.

Q. You asked them, didn't you? A. I don't remember that I asked them—yes, I asked them to sign it.

Q. In what respect was that contract of October 23rd inefficient? A. Well, you will notice that although——

Mr. RIDOUT: Objected to inasmuch as the contract of October 23rd, 1902, speaks for itself.

A. It has been testified to that this contract was identical with the one of October 23rd, 1902, except that this contract contained an additional provision, whereas I had done certain things I was entitled to a transfer of my interests in the property. As a matter of fact this contract contains eight or nine additional paragraphs, and what those additional paragraphs are can be ascertained from an examination of the contract itself. I cannot recall them all.

Q. Well, as I haven't asked you anything about that one you need not go into it. I will repeat the question.

(Pending question read to the witness.)

Mr. SIDDONS: I move to strike out the answer of the witness to the question put as absolutely irresponsive.

A. One additional provision in this contract was that the said corporation party hereby agrees to execute at once a conveyance
151 of said undivided one-third interest to said Charles M. Campbell, in fee simple. Another extra provision is that the said corporation agrees to indemnify the said Campbell against all liability or loss of every nature, including counsel fees and expenses of litigation which he may in any manner suffer, or incur for the benefit of said corporation under this agreement. Another additional provision is that the said T. Cushing Daniel and Samuel C. Redman hereby release the said Northwest Eckington Improvement Company and said Charles M. Campbell from all rights, interests or claim which they claim or could claim under any former agreement.

Mr. SIDDONS: I move to strike out the answer of the witness as not responsive to the question and I will ask the Examiner to read the question to the witness again.

(Same question repeated to the witness.)

A. I just answered that question by citing the additional provisions in the second contract.

Q. That is the only answer you will make, then, to that question, Mr. Campbell? A. Yes, sir.

Q. That extended or proposed contract of December 10th, from which you have just been reading, Mr. Campbell, was never accepted by the parties, was it? A. No, sir.

Q. Up to December 10th, 1902, the date of this proposed or extended contract, exclusive of the moneys that you had advanced on behalf of the Sanitary Dwellings Co. enterprise and the $500. paid on June 16th, 1902, and the item of $122.91 paid for taxes, as you have testified about the same time, what money had you advanced? A. The moneys I had advanced prior to December 10th, 1902, the date of the proposed contract, was as follows: December 8th, $957.55 taxes, October 23rd, surveyor, $10; December 9th; permit and water $19.35; December 10th, surveyor $5; making a total including the Sanitary Dwellings and the Franz trust payment and the taxes of $122.91, of $2,094.62.

Q. You went on, Mr. Campbell, after the refusal of the parties to execute this proposed contract, with your share of this enterprise, did you not? A. No, sir.

Q. You stopped then, didn't you. A. I told them that I preferred to lose what I had put into it than to go on without either a contract or a deed.

Q. But you did go on, did you not?

Mr. RIDOUT: Wait a minute. Let him finish.

A. (continued). When I didn't get the contract I immediately presented the deed to them for signature, and the thing was held right there until the deed was signed.

Q. Then, nothing more was done under the contract until that deed was executed and delivered to you; is that it? A. There were

only about two days in the discussion of the deed, and it was promised. As soon as he promised to execute the deed then I proceeded with the work.

Q. Then, you did not get a deed, but you got a promise to execute it? A. Yes.

152 Q. And you went on then? A. Yes, sir.

Q. Have you got with you the Fahey notes called for? A. No, I have not.

Q. Where are they? A. I haven't been able to find them yet. I got that letter only to-day and I have been very busy all day.

Q. And you haven't looked for them yet? A. I haven't looked for them as thoroughly as I will.

Q. Have you brought with you the various cancelled notes that figure in the so-called personal discount of $2,000? A. Yes, sir.

Q. I wish you would produce them. A. (Witness hands paper to counsel.)

Q. The last of the series that you handed me, Mr. Campbell, the one dated December 21st, 1903, for $1,400, payable to the order of Mr. Daniel and endorsed by him that one was paid at maturity, and that ended the series? A. Yes.

Q. And this discount was obtained by you by the making of this note signed by you to the order of Mr. Daniel, and endorsed by him on September 22nd, 1902? A. Yes.

Mr. SIDDONS: I offer those in evidence, to be marked Exhibits Defendant Nos. 25 to 30, inclusive.

Mr. RIDOUT: Objected to as immaterial and irrelevant to this controversy.

Q. Mr. Campbell, when you have produced the additional checks that you say there are, representing disbursements made by you on account of this enterprise, in addition to those here to-day on my call, will all those checks represent your disbursements on this account? A. Yes, sir; I think they will, for material and labor. There were other disbursements outside of that.

Q. How were they made? A. Well, there are several thousand dollars made by Messrs. F. H. Smith & Co. and charged to my account on the trust.

Q. What do they represent? A. They represent payments on the Franz trust.

Q. You mean the amounts that were utilized from those two loans? A. Yes, sir.

Q. To get releases of the ground upon which the ten houses were built? A. Yes, and the payment of interest.

Q. You don't mean that that was paid out of your funds? A. Certainly it was paid out of my funds when I charged myself with the entire loan.

Q. Where did you charge yourself with the entire loan? A. You will see where I charged myself with the entire loan when you examine my account, when it appears before the Auditor.

Q. Why did you charge yourself with that? A. I charged myself with all the money I received under the building loans.

Q. I am not talking about what you received. I am talking

about the money you paid out. A. And I would naturally credit myself with the amounts paid out on the trust from that building loan.

153 Q. You mean to say you charged yourself with money you did not get, and credited it although you did not pay it out? A. Well, I explained the matter I think as fully as I can.

Mr. RIDOUT: That question is objected to because it does not fairly state the witness' testimony, which is perfectly intelligent.

Q. Anything else, Mr. Campbell? A. Well, the account is quite long and voluminous, Mr. Siddons, and it is very difficult for me to remember several hundred items.

Q. I don't ask you to remember several hundred items. A. You are asking me to state what parts of the account these checks represent, and if there are any other payments made outside of these checks. I have answered it to the best of my ability and recollection.

Q. Which is, that you cannot tell? A. I think I have told you pretty correctly.

Mr. RIDOUT: The question is objected to because it does not correctly represent the witness' testimony by any means.

Q. In addition to the checks which you say you have yet to produce, and in addition to those several thousand dollars which you say you paid out in the way you have detailed in respect to the Smiths, are there any other disbursements made by you? A. Yes.

Q. And how were they made? A. There was a disbursement of $300 for a lot.

Q. How was that made? A. It was made by a payment to Ralston & Siddons, I believe.

Q. How was it made? A. By check to Ralston & Siddons.

Q. And that check is not here, and do you not intend to produce it in response to the call? A. You say it is not here?

Q. I am asking you? A. I don't know whether it is or not. I think it is.

Q. I am not asking you about checks that are here. A. Do you expect me to offer all the checks that are not in that long list?

Q. No, sir; I do not. A. I told you I don't know whether it is there or not. You have just examined the list and you ought to know.

Q. I am not asking you whether it is there or not. A. I understood you asked that question.

Q. I asked you whether the checks already produced and those you intend to produce, in addition to the amounts which you say you paid out in connection with Smith & Co., represent all your disbursements? A. I have already answered that question. I think they do.

Q. Are you certain about it? A. I cited certain cases where I believe they do not. I believe that includes all the cases.

Q. That is the check of $300 paid to Ralston & Siddons? A. I

didn't say that. I say there was $300 paid on a lot, and the check was paid to Ralston & Siddons.

Q. Any other item? A. I don't recall any other item. I could not carry that long account in my head.

Mr. SIDDONS: Let it be understood that counsel for the
154 complainants calls for all evidences that the witness claims represent disbursements made by him on account of this enterprise, whether they are made by checks or by a series of credits and charges or otherwise.

Q. I understand, Mr. Campbell, that you charged yourself with the full amount of the loans obtained through the brokerage firm of F. H. Smith Company? A. Yes.

Q. And credit yourself with the deductions made by them or their attorneys at the time of making the loan, as well, of course, as the money that you yourself paid out actually? A. Yes, sir.

Q. Then, you have charged yourself with receiving $25,000 from that source, have you not? A. Yes.

Q. Did you receive any other money on account of this enterprise than that $25,000? A. Yes.

Q. What? A. I charged myself with other funds.

Q. What you received, not what you charged yourself with; what else? A. I received the $25,000 building fund, the $600 Daniel note at the Second National Bank, which was my own note and Redman discounted, the $375 note, also signed or endorsed by me at the American National Bank and negotiated by Redman, both of which I paid off with the exception of $100, more than which Mr. Daniel owed me.

Q. Anything else? A. I don't recollect. If I recall any additional receipts of cash I will give it to you at the next session.

Q. Now, Mr. Campbell, did you at any time during the progress of this building enterprise—and I refer to both rows of houses—call on either Mr. Daniel, Mr. Redman, or the Northwest Eckington Improvement Company, to go on notes with you represented by you to be used in this enterprise, when you had, or ought to have, on hand a good deal of cash derived from the building loan. A. Part of the time the cash from the building loans would run ahead and part of the time it would run behind. The cash from the building loans held out until July. After July it ran short, and I had to make advances out of my own funds.

By Mr. RIDOUT:

Q. What year do you mean? A. 1903. Now, as to whether there were any notes negotiated from January to July I cannot recall. I presume there were.

By Mr. SIDDONS:

Q. You presume you called on them to go on notes with you for or about this building enterprise, when you had in your hands, or ought to have, cash derived from the building loans? A. I will state that the expenditures prior to the first payment under the building loan, were made by me, and amounted to several thousand

dollars in all—between two or three thousand. Then, after the building loans began to come in they ran ahead of the necessities of the cash until July. After July there was a deficiency which I met. As we anticipated this deficiency we put out as many
155 notes as we could from the beginning as a wise precaution to conserve the cash and make it last as long as possible.

Q. All that is very argumentative, and I must now ask you to answer my question by yes or no if you can.

Mr. RIDOUT: And if you wish to add any explanation to your categorical answer, you are entitled to do it. Council is entitled to a categorical answer, and if you want to make any explanation you are entitled to do it.

A. And I recall we gave a note I think to Fahey & Co. and possibly some others, but it was with a view to securing as much note credit as we could, in order to make the demand on the cash as light as possible, and even with that help we ran out of cash in July.

Q. Fahey & Co. was the only note, or were there others?

Mr. RIDOUT: He said there were others.

Q. What others? A. I have no further answer to make to that question.

Q. You mean you decline to answer? A. I have answered it.

Q. I will ask you what others besides Fahey & Co.? A. I told you several others but I don't recollect them.

Q. You haven't said that before. A. I presume there were several others. I don't recollect the facts about the notes given.

Q. But there were notes given when you had cash on hand? A. I have already stated all I care to state on that subject.

Q. On page 93 of your examination in chief, you stated in answer to a question by Mr. Ridout that Daniel never returned the Malnatti deposit of $500 to the fund. What do you mean by the words, "to the fund?"

Mr. RIDOUT: Question objected to because precisely the same question has been answered at a former session.

A. I mean the Malnatti fund received from the second sale of property to Malnatti.

Q. Return to whom? A. Cull—not Cull; to the uses of the building enterprise.

Q. How do you know it was not? A. I know it from the fact that I have no knowledge of it.

Q. Why did you say it, then? A. What I said was based on a statement in writing to me by Mr. Cull, that the deposit of $500 had been made to Mr. Daniel, and I have no knowledge that he ever returned it to the uses of the enterprise after the agreement was entered into.

Q. You now modify your previous answer? You said before he never did, and now you say you have no knowledge and never had any knowledge that he ever did. A. That is what I say.

Q. You had no knowledge he ever returned it, or it was not applied to the uses you conceived it should be applied to?

Mr. RIDOUT: All this is objected to because the witness was fully interrogated in respect to that matter and answered in response to the question.

156 A. I have already answered all I care to.

Q. If Mr. Daniel ought to return the $500 to the fund, is it your idea that all money derived from the sale of property to Malnatti should have been so returned? A. It was my idea that the funds derived from the second sale of property to Malnatti should be disbursed in accordance with the agreement he entered into to that effect.

Q. How about the first? A. My idea in regard to the first was that I was entitled to reimbursement for the money I had laid out in the attempt to handle this property, up to and prior to the contract of October 23rd, 1902.

Q. You refer now to the $4,000 item which was retained first in Mr. Cull's hands? A. Yes, I am referring now to the first sale.

Q. Should not, in your view, all of the money derived from both of the sales of land made to Malnatti, be applied to the payment of the obligations incurred in this enterprise? A. That may be the law applicable——

Q. I am not asking you about the law; I am asking you what your view is about it. A. That may be the law, but it was not my idea.

Q. Was it or was it not your idea, Mr. Campbell, that all of the money realized from the sales of the land made to Malnatti, barring the $500 deposit to which you have referred and stated by you to have been received by Mr. Daniel on the second sale, should have been applied to meeting the obligations incurred in this building enterprise? A. No, it was not my idea at first. My idea at first was that whereas we entered into a plain and straightforward agreement that any money I advanced in handling this enterprise and trying to get a market for it, was to be returned to me out of the first sales, and this being the first sale since this agreement was made that the money was properly returnable to me. That was my original idea in regard to the matter.

Q. Now, we will eliminate the amount that you think ought to be returned to you then; and coming down to the money that you actually did receive from the first Malnatti sale, is it your opinion that the money should be applied—and the money received by the Northwest Eckington Improvement Company too—should have been applied to the meeting of the obligation incurred in this enterprise? A. Yes, if each partner had advanced the same amount of money to the enterprise. Where one party was advancing it all I did not think it was equitable.

Q. Then, you did not? A. I did not, no, at that time.

Mr. RIDOUT: Counsel for the defendant insists that by the call for the paper dated December 10th, 1902, and the examination of the witness thereon, counsel for the complainants has offered in evidence

the said paper, and he asks the Examiner to take it into his custody in order that it may be returned for action by the court. (Marked J. A. S.)

Mr. SIDDONS: Counsel for the complainants deny that he has examined the witness about the paper.

Whereupon an adjournment was taken to meet on Wednesday, April 19th, 1905, at 7.30 o'clock P. M. at the same place.

157 SATURDAY, *April 29th*, 1905—1.30 o'clock p. m.

Met pursuant to agreement of counsel at the same place on Saturday, April 29th, 1905 at 1.30 o'clock P. M. to continue the taking of depositions on behalf of defendant in the above entitled cause.

Present: Same counsel and parties.

Whereupon CHARLES M. CAMPBELL resumes the stand for further cross-examination.

By Mr. SIDDONS:

Q. Have you those Fahey notes you were asked to produce? A. Yes. (Handing papers to counsel.)

Q. Mr. Campbell, what was about the date of the earliest note given by any of you connected with this enterprise to Fahey & Company for the settlement of any amount that might have been due them? A. I think the first note was given March 14th, 1903, $400.

Q. Now, as a matter of fact didn't you get these gentlemen to either make or endorse one or more notes in favor of Fahey & Company at an earlier date than March, 1903? Let me refresh your recollection. They commenced their work, as I think you have testified in this case, in the latter part of December, 1902. Now, was not one of the early settlements on account of that work with them in the shape of a note.

Mr. RIDOUT: Counsel for the defendant suggests that if Mr. Siddons has any such note the fairer way would be to show it to the witness and ask him any questions about it that he sees proper.

Mr. SIDDONS: Of course I would if I had it.

A. If there was such a note I don't recall it.

Q. That is your best recollection, is it, Mr. Campbell? A. Yes, sir.

Q. And the Fahey notes that you have produced together with the memorandum containing information about earlier notes are, to the best of your recollection, all of the notes ever given to Fahey & Company on account of this enterprise? A. Yes.

Q. Now, Mr. Campbell, with the checks that you have now produced, and referring to your testimony the other day when you alluded to the deductions made by Smith & Company which you had claimed credit for, having charged yourself with the whole amount of the loans, you have now exhibited all the disbursements that you claim to have made on account of this enterprise? A. No, sir.

Q. Were there others? A. Yes, sir.

Q. How were these others made? A. They were made by cash, by check and by credits I took. I paid Andrew C. Plant, Architect, $12 in cash. I paid W. R. Grimm $25, and he would not give me a receipt for it and I kept the check. I brought it down here to show it to you; interest on $65 for ten and a half months, $3.41, which I claim for the use of the money; Farnham, blue prints, I paid part of that bill in cash. There was a small balance due him and I did not want to draw a check and I paid part in cash. It was less than $2, the cash part of it.

158 Q. With the Grimm check and the items you have given to the Examiner, with the credits that you claim for the deductions made by Smith & Company at the time of making these loans, you have now told us all the disbursements and credits that you claim on behalf of this enterprise? A. Yes, so far as I recall, except the mill work that the enterprise used from my row of houses on the hill, and which was charged for at the estimate based upon the stuff by Mr. Wallace, $264.95, and hauling the same $7.

Q. Which of the houses belonging to the Northwest Eckington Improvement Company did that material go in? A. It went in the two west houses of the south row, which were larger and finer houses than the others.

Q. And the estimated price of these was agreed upon between you and Mr. Wallace? A. Yes.

Q. And carried from houses you were then building on the hill over to the Eckington property? A. Yes, with Mr. Daniel's approval. That matter was called to his attention in advance.

Q. Mr. Campbell, did you ever pay any interest on the loans obtained from the Smith Company? A. I don't believe I did.

Q. I show you a letter and ask you if that is in your handwriting? This is a letter you sent to Mr. Winfield. (Counsel hands witness letter beginning, "Dear Mr. Winfield," dated January 5th, but not the year.) A. Yes, sir; that is my letter.

Q. That was January 5th, 1904, was it not? A. Yes, sir.

Q. Mr. Campbell, I call your attention to this paragraph in the letter to Mr. Winfield, "Mr. Daniel is honest in his point, and I do not question it—that he is only waiting to have the account I have rendered checked off." I want to ask you to what you referred when you used the words "that he is only waiting to have the account I rendered checked off"? A. I referred to the list of checks I had submitted to him, and the checking that it had to undergo.

Mr. SIDDONS: I offer that letter in evidence to be marked Exhibit Defendant No. 31.

Q. I show you, Mr. Campbell, a letter signed "J. C. Thompson, plasterer," and dated February 20th, 1903, and ask you if that is not the estimate Mr. Thompson gave you for the plastering about which you previously testified? (Handing paper to witness.) A. That is his estimate probably given to Mr. Wallace, not to me.

Q. It is addressed, "Mr. Campbell." A. I have no doubt that is his estimate.

Mr. SIDDONS: I want to offer that in evidence, but that does

not include certain memoranda appearing on the back of it, to be marked Exhibit Defendant No. 32.

Q. Now, Mr. Campbell, besides this statement of checks, as you call it, which you submitted to Messrs. Daniel and Redman, did you ever furnish them with any other statement of checks or statements of account? A. No, sir; although I was willing to, had they demanded it.

Q. Mr. Campbell, you will recall in Mr. Daniel's testimony
159 that he stated to the effect that in July, 1903, you submitted to him a proposed contract for the significance of himself and Mr. Redman, and the Northwest Improvement Company? A. Yes, sir.

Q. Was there not such a contract prepared and tendered at that time? A. No, sir.

Q. There was no other contract ever offered to them then, except the contract that you proposed to them December, 1902? A. No other contract subsequent to the date of the one dated October 23rd, 1902, pertaining to this transaction.

Q. Do you know where these Fahey notes, referred to in your memorandum, are? A. No, sir.

Q. Mr. Campbell, let me ask you this: Don't you think that this note which you say on your memorandum was given Fahey & Company on March 14th, 1903, was a renewal note? A. It might have been.

Q. If it were a renewal note, had you any idea of the time of the earlier one which it renewed? A. It was probably a sixty day note that was renewed.

Q. What is your best recollection about it? A. It was discounted at the Washington Savings Bank and it was a sixty days note.

Q. That is what this says here. You paid it at the Washington Savings Bank? A. Yes.

Q. That is the earlier one I am speaking of? A. Yes, the sixty day note, the preceding one.

Q. Is it your recollection that there was a note given to Fahey & Company in January, 1903 for sixty days for $400, which was renewed by the note mentioned in your memorandum here of March 14th? A. I will look it up when I get home, Mr. Siddons, but I cannot testify to that from my recollection, because I haven't any recollection on the subject.

Q. Well, it may have been so? A. Yes, sir.

Q. Then, I will ask you to make a further examination, because I would like to have those notes or a memorandum of them at least, to form a part of your examination. With that understanding I will offer this memorandum that the witness has produced as a list of notes given Fahey & Company, which notes he is unable to produce, at the present time at any rate, to be marked Exhibit Defendant No. 33. I also offer in evidence three Fahey notes, dated July 1st, 1903, August 28th, 1903 and September 28th, 1903, to be marked Exhibit Defendant Nos. 33, 34 and 35.

Q. About that Grimm check, Mr. Campbell, which you say you

have here—— A. (Witness producing check.) That breaks my record. I have no voucher for that at all.

Mr. SIDDONS: I offer that check in evidence to be marked Exhibit Defendant No. 36.

(Which check is as follows:)

No. 672. WASHINGTON, D. C., *Jan.* 30, 1903.

Citizens' National Bank of Washington City.

Pay to the order of N. R. Grimm Twenty-five Dollars.
$25.00. C. M. CAMPBELL.

160 Which check is marked on the left hand end "Eckington houses," and endorsed on the back "N. R. Grimm," and the stamp of the Citizens' National Bank, paid February 2nd, 1903.

Q. Mr. Campbell, have you given all the receipts that you have charged yourself with in this enterprise? A. I don't recall. If you will read me the statement of what the receipts were I will tell you whether it is correct.

Q. The only statement I have that is in any form is a statement I have here. Calling your attention to the last page I will ask you whether the entries under the head of debits contain all the receipts for which you undertake to account? (Counsel handing witness Complainants' Exhibit 7.) A. No, sir. The proceeds of first loan $12,500; proceeds of second loan $12,500; F. H. Smith Company, refunder, $4.06; F. H. Smith Company, refunder, $22.75; District refunder, pavement, $65; check of Malnatti money $200; Redman note, $375; Daniel note $600, and Mackall, carpenter work, $9.

Q. Now, that includes, you are sure, all of the receipts. A. I think so.

Q. This item in your statement of checks, so-called, of December 12, "Return check, F. H. Smith Company, $72.25," that is erroneous. It should be as you read it, $22.75? A. The way I just read it is correct.

Q. What was that item that you read, "Deposit returned, Rhode Island Avenue, $65." return from whom? A. From the District.

Q. For a deposit made there? A. A deposit made against cutting up the street and the pavement.

Q. What was the item a little while ago that you charged interest on? A. That was the item.

Q. Was it your money you were getting back? A. I got back my money but it was deposited there.

Q. Do you put this $65. in as a receipt from the enterprise, not from your money, didn't you? That was not your money, in other words, was it? A. Yes, sir; it was my money.

Q. Why is it treated, then, as a receipt here? You mean when you are charging yourself with $65. received on account of this enterprise, you are charging yourself with your own money; you don't mean that? A. Well, what I had in my mind when the District returned that money to me was that I was not entitled to any credit

in the matter except the interest on the money while it was lying there for ten months and a half; and it may be an error in charging that $65. among the debits.

Q. What is the fact? A. I could not tell until I go over the account. It was an erroneous entry against my interest.

Q. When was that deposit made, Mr. Campbell? A. It was made December 9th, 1902.

Q. December 9th, 1902? In the list of checks, as you call it, which you submitted to these gentlemen, I find under date of December 9th, expense of deposit $65. which nobody seems to have
161 found, on the second page. That is the item, is it? A. Yes, sir. That is not in my account.

Q. I said in the list of checks that you have submitted to these gentlemen. Now, under date of December 9th, in this list of checks —what year is that? A. There is no year given.

Q. I say, what year was it? A. It is an erroneous date; probably 1902 it was intended.

Q. You mean to say it was returned on December 9th, 1902? A. It appears so from the list, but that was not the fact.

Q. When was it returned? A. It was returned ten and a half months after that.

Q. What date? A. I cannot give the date when it was returned.

Q. How did you calculate the charge of $3.41 as interest? A. That is six per cent. on $65. for the period the money lay there.

Q. How did you ascertain it? A. I ascertained it by the date when it was returned.

Q. And you cannot give us that date? A. No, sir; I cannot recall it.

Q. And the statement from which you have been reading, does not give it? A. No, sir.

Q. Then, in that statement, or list of checks, as you call it, that you furnished these gentlemen, the item of $65 in fact appears on both sides of the account, does it not? A. I judge so from your reading it there.

Q. Look on the second page under date of December 9th, and the last page for your receipt? (Handing witness Complainants' Exhibit No. 7.) A. Yes, sir.

Q. So that there has been no error made against yourself in that statement? A. Not in that statement, no, in that particular.

Q. Or at any other time? A. Any other time?

Q. Yes. I mean as to this item of $65. A. Not as to this item of $65.

Q. So that there is no $65. on that account due you from the enterprise? A. No.

Q. Now, Mr. Campbell, we are coming down to little things, but you are charging us with interest on your $65. deposit here. Do you remember getting a refund from the District of $22.01 on November 5th, 1903? A. For what purpose?

Q. Auditor Garrison? A. For what purpose?

Q. I don't know.

Mr. RIDOUT: I object to the question in its present form, because

Mr. Campbell could have received hundreds of refunds which do not belong to this transaction.

A. I have received several refunds on my own transactions.

Q. I am asking you about November 5th, 1903, whether you received a refund or rebate from the District Government, probably through Auditor Garrison, amounting to $22.01 on account of this enterprise? A. No, I believe not.

Q. You never received such a sum? A. No, sir.

162 Q. Do you not recall Mr. Daniel's handing you a check or warrant, whichever form it was in, from the Auditor of the District for that amount of money on account of this enterprise? A. What part of the enterprise?

Q. I don't know what part of it. A. If Mr. Daniel recalls it probably he will inform you what part of the enterprise he refers to. I don't recall it.

Q. Do you deny having received such a sum? A. I simply say I have no recollection of it.

Q. If you ever received it you haven't given the enterprise credit for it, have you? A. No, sir.

Whereupon an adjournment was taken to meet on Wednesday, May 3rd, 1905 at 7.30 o'clock P. M. at the same place.

TUESDAY, *May 2nd*, 1905—12.30 o'clock p. m.

Met, pursuant to agreement of counsel at the office of attorney for defendant in the Fendall Building, Washington, D. C., on Tuesday, May 2nd, 1902 at 12.30 o'clock P. M.

Present: Same counsel and parties.

Whereupon JAMES W. CAMPBELL was produced as a witness on behalf of defendant, and who having been first duly sworn, testified as follows:

Direct examination.

By Mr. RIDOUT:

Q. Please state your name and residence. A. James W. Campbell; residence Cambridge, Ohio.

Q. What is your profession? A. Law.

Q. Have you ever occupied any judicial position, and if so, what. A. Yes, I occupied the judg-ship of the Common Pleas Court of our District, the Eighth District of Ohio.

Q. For how long? A. Two terms.

Q. Are you acquainted with Mr. T. Cushing Daniel, one of the complainants in this cause? A. Yes, sir.

Q. You recollect having a conversation at the house of Mr. Charles M. Campbell, in October, 1902, with Mr. Daniel and Mr. Charles M. Campbell? A. Yes, sir.

Q. What was the subject of that conversation? A. The subject of the conversation was the manner in which a certain contract in writing between my brother and some improvement company should be executed or approved.

Q. Now, state what was said by Mr. Daniel, and so far as it is necessary to enlighten what he said, state what was said by Mr. Charles M. Campbell and yourself.

Mr. SIDDONS: I would like to have it understood and I cannot say by the way you frame your question, whether the conversation to be detailed is objectionable or not. For the purpose of letting the witness testify, I would like to reserve my right to object after the answer.

163 Mr. RIDOUT: Yes, you will have a perfect right to object afterwards.

A. I was at my brother's house and the question was discussed between us, and he went out and telephoned Mr. Daniel to report late in the evening, about seven or seven thirty o'clock, and Mr. Daniel came out to the house about that time.

Q. State what was said by each of those present? A. I cannot state what was said by each one. I can state the subject of the conversation and the idea that was conveyed by both parties on several points.

Q. State that. A. One or the other of us introduced the subject when Mr. Daniel came in, and he may himself have spoken of what the subject was. I don't remember particularly about that. It was about a contract which was there, which my brother was to execute or not, by which he was to take the management and have charge of certain property out here in Eckington, I think it was, that some Eckington Improvement Company had owned it, and the Sanitary Dwellings Company had been organized. I said to Mr. Daniel—he asked me my opinion whether or not it should be ratified by a stockholders' meeting, and I expressed the opinion that I thought it should. I said to him, You are conveying a very large interest in this property, or proposing to convey it, and it seems to me it is a matter of sufficient importance that the stockholders should ratify it. And Mr. Daniel urged that he and Mr. Redman were the principal owners, and that they had conveyed lots by deed and no objection had been made. I told him that the fact that they conveyed lots and sold them for cash probably might be all right in itself. At any rate no question of estoppal so far as he and Mr. Redman were concerned, at any rate, could come up, but I thought inasmuch as they were conveying one-third of the entire property, that it should be ratified by the stockholders. And he did not seriously object to doing it except he thought it was not necessary. And it was agreed that a stockholders' meeting should be held and it should be ratified by the stockholders. I criticised the language of the contract in reference to the interest it was conveying. My recollection is that the contract used the words, "possessed" that he was to be possessed of a third interest; and I told him I would not use that word. And my brother argued that that was a better word than any, that he thought "possession" was the biggest word anybody could use to hold an interest in real property. And I told him that one man might have possession and another ownership. They agreed as to what the

contract was. And then my brother or Mr. Daniel, I don't know which, introduced the matter, but whichever one introduced it, they both urged me to buy the Redman interest, and they told me I could buy it for fifteen cents a foot, which I did not entertain. And after the discussion as to what they were going to do, I said that I preferred that I would let my brother have $10,000 to get the thing underway if he needed it. The plan, as stated, was, I should say, that he should have the control and management of the development of the property, and it was to be made
164 sufficient to carry the charges. The property was in a precarious situation, they stated; there was considerable debt and arrearages, and they were going to build some houses; and my recollection is that the limit was ten houses, and I am certain that was talked about, but that they were starting with a less number. And they thought that my connection with and relation to the officers of the Baltimore & Ohio Railroad would be advantageous, and probably for that reason, among others, they wanted me to take the Redman interest.

Q. State what were your relations to the Baltimore & Ohio Railroad at that time? A. Well, I had been counsel and special counsel, and had been very intimate with all the officers for thirty years, I presume, and had been a director in one of the roads, and am yet.

Mr. SIDDONS: I object to the conversation that has been just detailed by the witness on the ground of its irrelevancy and immateriality and as an attempt to construe some portion of the contract which in part is the subject matter of the controversy. And I move that the whole of the witness' testimony be stricken out.

Cross-examination.

By Mr. SIDDONS:

Q. Do you know whether the contract as you saw was in fact ever executed, of your own knowledge? A. No, I don't know what paper was executed; the particular paper. I know they agreed to have a stockholders' meeting.

Q. What time in October did this conversation occur? A. Well, it was the latter part. Let me see if I cannot give you the date. I keep a little book, and I don't know whether I can refresh my memory and give the date or not. It was 1902. I was here from the 14th to the 16th, inclusive, including getting here and on my way, travelling; and then about the 20th, part of the week of the 20th.

Q. Judge, did you have any interest, personal interest, I mean in your brother's proposed transactions with the Eckington Improvement Company at the time of this conversation? A. Any pecuniary interest?

Q. Yes. A. No, sir.

Q. You had no interest beyond a fraternal interest in the enterprise? A. That is all.

Q. And how did it happen that you were discussing the matter?

Did your brother broach it to you? A. He broached it to me and asked my advice about it.

Q. Did he exhibit any proposed contract to you? A. Yes.

Q. He had it there? A. Yes, he had it there. And on a piece of paper I made a memorandum of what I thought would be better language to express the intention.

Q. Now, you never did go on with the proposal that you testified was suggested at that time, that you would buy the interest of Mr. Redman in this property? A. No, I didn't go on with it, only it was spoken of to me after that again several times.

165 Q. As a matter of fact, though, you didn't go into it at all? A. No, I did not take any interest in it at all, and haven't any interest in any way whatever in it.

Q. You have, however, very considerable interest in a good deal of your brother's holding here, although they stand in his name, have you not, sir? A. Well, sir; we have a joint interest in a good deal of property here, yes.

Q. But you say you have no interest in his claim that is the subject matter of this controversy? A. None whatever.

Q. Did you let him have the $10,000 that you spoke about? A. No. He did not ask me for it. He did not call on me for it.

Q. Now, I understood you to say that your brother had to telephone to Mr. Daniel to come up? A. Well, yes. And I spoke of that to Mr. Daniel. He went out to telephone him, and he said he didn't know whether he would catch him or not. But Mr. Daniel came in. And he said, I have a good deal of trouble sometimes finding him. I remember remarking that when a fellow wanted them they did not seem to be in and when he did not want them it was much easier to get them. And Mr. Daniel spoke of having caught him somewhere. Now, I have an impression—I would not speak of this from recollection—that he was out at an hotel or some place. I might be mistaken. I know he came out before seven or half past seven o'clock.

Q. The consummation of your brother's offer or purpose on this evening was not for purpose of discussing this contract, was it? A. It was for the purpose of discussing how best to properly execute the agreement to assure him of the one-third interest in the property.

Q. Was not the subject matter of that meeting the affairs of the Armat Moving Picture Company, and was not that what brought you together there, and was not that the main object of your gathering, and that this contract you have been talking about was merely an incident? Did you not discuss that night the affairs of the Armat Moving Picture Company in which your brother and Mr. Daniel were both interested? A. Oh, that is possible. We discussed that a great many times.

Q. The question is whether it was not discussed that evening and whether it was the main object of your coming together? A. No, that was not the object of our coming together.

Q. If I understood you Mr. Campbell was merely seeking your legal advice about this contract? A. Yes, sir.

Q. And submitted it to you for your criticism? A. Yes, sir.

Q. Did he tell you that he had an attorney at the time to whom the matter had been already submitted and in fact typewritten in his office?

Mr. RIDOUT: That question is objected to, because it has nowhere appeared in the testimony, but on the contrary the precise contrary has appeared, that the paper in question was not typewritten in my office.

(Pending question read to the witness, as follows:)

Q. Did he tell you that he had an attorney at the time to whom the matter had been already submitted, and in fact type-
166 written in his office? A. No, I don't remember his telling me that.

Q. I don't mean telling you that the contract was typewritten in a lawyer's office. A. I don't remember his telling me that he had an attorney. I remember his speaking about Mr. Ridout's opinion about that contract, but I cannot say whether it was spoken of that night.

Q. Judge, as a matter of fact, your advice in this matter, except on the question of holding a stockholders' meeting,—your advice as to desirable changes to make in this contract in your brother's interest, so far as you know were not followed, were they? A. Now, I have an impression——

Q. Of course, I would not want your impression, Judge. Give your best recollection or your knowledge about it. A. My best recollection is that after that Mr. Daniel, at the picture company's office, told me that Mr. Ridout agreed that I was right about it, that he coincided with my opinion.

Q. You see that is not an answer to my question.

(Question repeated to the witness, as follows:)

Q. Judge, as a matter of fact your advice in this matter except on the question of holding a stockholders' meeting, your advice as to desirable changes to make in this contract in your brother's interest, so far as you know, were not followed, were they? A. Not followed?

Q. Not followed. A. I say I understood from Mr. Daniel that they were followed by Mr. Ridout—I would not want to speak of that positively—that he drew a contract embodying my ideas, that my brother considered his word "possession" was better than mine, "To have and to hold," to entitle him to a one-third interest.

Q. There were no changes made in the paper that was exhibited to you that evening, as a result? A. I said I made changes on a piece of paper that I had written out. I made changes on a paper as to how I would write it, but whether that was adopted I don't know.

Q. It was not done that evening? A. No, it was not done that evening.

Redirect examination.

By Mr. RIDOUT:

Q. Judge, you spoke of other occasions on which this subject was alluded to. Do you mean it was alluded to by Mr. Daniel? A. No, except this one impression I have of his saying that you agreed with me on—that is an impression.

Q. Do you recall when that last conversation was? A. No, except it was afterwards.

Q. Can you recall where it was? A. My recollection, if I am right, is that it was at the picture office. I think it was on E Street.

Mr. SIDDONS: Of course all this testimony of the witness as to his impression, I object to as improper.

Q. Referring to the first conversation at Mr. Charles M. Campbell's house, can you recall whether as a result of that con-
167 versation Mr. Daniel finally consented to a stockholders' meeting. A. They agreed to have it. I testified to that. They agreed to have a stockholders' meeting, that night. There was no particular objection to it except he thought it was not necessary, and my brother thought it was better and I thought it was better.

JAMES W. CAMPBELL.

Subscribed by me for this witness this 31st day of October, A. D. 1905.

JOHN A. SWEENEY,
Examiner in Chancery.

WEDNESDAY, *May 3rd,* 1905—7.30 o'clock p. m.

Met, pursuant to agreement of counsel, at the same place on Wednesday, May 3rd, 1905, at 7.30 o'clock p. m., to continue the taking of depositions on behalf of defendant in the above entitled cause.

Present: Same counsel.

Whereupon CHARLES M. CAMPBELL resumes the stand for further cross-examination.

By Mr. SIDDONS:

Q. Mr. Campbell, on page 40 of your examination in chief, Mr. Ridout asked you this question, "Did you in any case take credit for a note which you did not pay"? And your answer is, "No, sir." Now, I show you Complainants' Exhibit No. 7 and call your attention to the item under date of September 6th, 1903, A. M. Cowell, $400. A. I was not referring to that account. I was referring to my regular account. I do not call that an account.

Q. Well, referring to this item under date of September 6th, 1903, A. M. Cowell, $400, was that a payment made by you to Mr. Cowell as of that date? A. Judging by the date of it that is an error.

Q. In respect of the date of it? A. It should not be in that list.

Q. That, then, was an error and there was not a payment made to Mr. Cowell, on September 6th, 1903, by you of $400? A. On the contrary, it was made on that date, but it was not made on this account.

Q. Was it made on account of the Eckington Improvement Company enterprise? A. No, sir.

Q. It had nothing to do with it? A. No, sir.

Redirect examination.

By Mr. RIDOUT:

Q. Mr. Campbell, on page 9 of the Prospectus of the Sanitary Dwellings Company, Complainants' Exhibit No. 2, reference is made to the purchases of land by the railroad companies. Had any such purchases or not taken place before legislation was enacted on the subject of the rearrangement of the railroad tracks? A. Yes, purchases had been going on for several years.

168 Q. There is a map shown in the prospectus. Was that map a copy of any existing map? A. No, sir.

Q. How and why was it made? A. It was made by us in order to show land purchases made by the railroad company; prospective improvements.

Q. At that time what was your anticipation as to the effect and probability of railroad improvements in enhancing the value of the ground for residential purposes? A. It was very uncertain, for the reason that if the improvements were made we were afraid that they would put a lot of railroad tracks alongside of this property, and use it for the storage of empty cars, in which event it would seriously damage it for residential purposes.

Q. Would such a use have injured it for the purpose of enhancement of the Sanitary Dwellings Company? A. No, sir.

Q. Why? A. Well, for the reason that the Sanitary Dwellings Company was building a cheap class of houses for railroad laborers and others, and they were not building them to sell again.

Mr. SIDDONS: I object to this line of examination, as it has been all gone over by counsel in his examination in chief of the witness.

Q. On page six of the prospectus, reference is made to probable enhancement of value by reason of the railroad improvements and partly on account of the natural growth of Washington? A. Not the railroad company's improvements. I guess the company's improvements and the natural growth of the city.

Q. The company's improvements and the natural growth of the city? Especially why was no allusion made to that point in the prospectus to the possible effect of railroad improvements in depicting the influences that would enhance the value of the property? A. The proposed railroad improvements were not mentioned in that paragraph for the reason that but little was known at that time of what the railroads would do. In fact, the bill under which the present improvements were made was not enacted for nearly a year after that date.

Q. Did Mr. Redman ever promise that you should be reimbursed

out of the first sales for money which you had advanced for the Sanitary Dwellings Company?

Mr. SIDDONS: Question objected to as improper re-direct, and also as irrelevant and immaterial.

A. Yes, sir; he did. And he signed a memorandum to that effect, which Mr. Daniel and I in looking at afterwards did not like, and we took a pen and crossed out a part of it, and thought it would be better if written in a different way.

Mr. SIDDONS: I object to the witness testifying to anything about a paper which has not been produced.

A. (continued). And it was rewritten and condensed.

Q. What became of the rewritten and condensed copy? A. Mr. Daniel signed it as soon as it was finished, and that is the one I neglected to take to Mr. Redman, being sure he would sign
169 it, for the reason that he signed the one that preceded it, which was not the condensation.

Q. Why was it that you insisted on being repaid from the first Malnati sale the money you had advanced?

Mr. SIDDONS: Question objected *as* improper, indirect, and as part of the case in chief, and as immaterial and irrelevant, and because it is not offered.

A. Because it was the agreement it should be so.

Q. What proposition, if any, did you make to Mr. Daniel and Mr. Redman concerning the use of the remainder of the Malnati purchase money upon condition of their paying their share of previous expenditures?

Mr. SIDDONS: Objected to for the same reason.

A. I was willing that it should all be applied to the debts of the enterprise, if they would pay up their share of what had already been paid.

Q. If that proposition or suggestion of yours had been complied with, and there had still remained a small balance, what was your proposition regarding that? A. After the Malnati money was used up and there was still a residue of unpaid debts, my proposition was for each of us to pay his share of them and liquidate them.

Mr. SIDDONS: Let it be understood that this all goes in subject to the same objection of mine.

Q. While you were absent from the city, did any of the paper given in connection with the enterprise, mature? A. Yes, sir; one $200 note matured at Bell & Company's bank.

Q. What, if anything, did Mr. Daniel do in the way of protecting it? A. He refused to pay the interest which amounted to only $3, and the payee of the note had to pay it. On my return to the city I liquidated it. I paid the note and the interest. I repaid him, and the interest. I never knew Mr. Daniel to pay anything when I was in the city or out of it that I can recollect.

Mr. RIDOUT: Now, Mr. Siddons, with the exception of filing those

copies which Mr. Hoover promised to make for us, and which he told us yesterday he was finishing as rapidly as possible, that is the defendant's case.

CHARLES M. CAMPBELL.

Subscribed and sworn to before me this 21st day of October, A. D. 1905.

JOHN A. SWEENEY,
Examiner in Chancery.

170 EXHIBIT DEFENDANT No. 1.

Armat Motion-Picture Company, 627 E Street N. W.

Phone East 181-M.

Parlor Kinetoscopes.

WASHINGTON, D. C., *August* 6/1902.

DEAR MR. CAMPBELL: Inclosed find letter received from the Safe Deposit Co. It looks as if we would have to come down to releasing five instead of ten lots if they will agree to same, and I think they will.

We will not be obliged to keep this loan at 6% as we will have the privilege of paying it off at any time.

Although 35¢ seems to be high to release the lots—we must remember that we get credit for the amount on the principal as secured by the trust—as well as the lots. It has the additional advantage of putting off the next interest payment for 6 months. In the meantime we should do some good work.

White me your ideas on this subject, as the 26th is drawing near and want to do all I can to get the matter in good shape before you return as I will have to leave about the 15th or 16th of this month as you know.

I have about arranged to have a new loan of $12,000 @ 4½ per cent. to run for three years—secured on the property as left after selling the Bank which we offered them at $3,500.

This will bring in about $1500 to us soon after the first of next months.

Chevy Chase Theatre is not yet in good running shape just yet—but we are taking in about $25 per night.

Hoping you are enjoying yourself and with best wishes for your family,

I am sincerely your friend,

T. C. DANIEL.

EXHIBIT DEFENDANT # 2.

Glenwood & Ocean Avenues.

NEW LONDON, CONN., *August* 19, 1902.

DEAR MR. CAMPBELL: Your letter rec'd. Tyler & Rutherford *promised* me *positively* to *advise the Phila. Company* to make the new loan of $12,000 on the remaining property—a diagram of which I left with them.

I told them if they didn't want the loan I could get it from the Riggs Bank by paying 1% commission.

In other words they had nothing to do with what we got for the property.

171 I hardly think the Franz interest can be reduced to 5% by paying the $5000. You suggest we borrow, If you say so I will write Mr. Jones an- ascertain.

It seems to me if we can borrow the $3000 each on the houses to be built, we could finance it so as to pay $2,800 for the five lots out of this loan and carry on the building operation.

The first thing to do is to find out whether we can secure a loan of this size and pay over the $2,800 to Mrs. Franz, in order to stop any more interest payments for 6 months. We can then try to arrange a new loan. I think she will release five lots instead of ten as stated. I of course agree with you in reference to your not being expected to spend more of your individual money.

And am willing to borrow money as you suggest—as I believe in the investment—but I do not see exactly how it will accomplish the purpose as you suggest, viz. extension of present trust. Let me know the result of the application for the B. & L. Asso. loan. If after talking with them you think they will make the loans I would pay the $3 appraisal fee and let them go out and see the property.

Giving you my best wishes and awaiting your answer, I am sincerely yr. friend,

T. C. DANIEL.

EXHIBIT DEFENDANT # 3.

This deed, made this Sixteenth day of January, in the year of our Lord one Thousand Nine Hundred and Three (1903), by and between the Northwest Eckington Improvement Company, a corporation duly created and existing under the laws of the State of Virginia, and having authority by its charter to buy and sell real estate, party of the first part, and Charles M. Campbell of said District, party of the second part.

Witnesseth, that the said party of the first part for and in consideration of divers valuable considerations and the sum of Ten Dollars current money of the United States, to it in hand paid by the said party of the second part, the receipt of which, before the ensealing and delivery of these presents, is hereby acknowledged, has granted and by these presents does grant, unto and to the use of the

said party of the second part, his heirs and assigns, an undivided one Third Interest in all those certain pieces or parcels of land and premises situate and being in the County of Washington, District of Columbia, and known and distinguished as and being

All of Lot numbered Thirty-five (35) in Berry and Middleton's Subdivision of "Metropolis View," as per plat recorded in the office of the Surveyor of the District of Columbia in Book Governor Shepherd, page 41, except the portion thereof within the exterior lines of Rhode Island Avenue and the portions of said described Lot heretofore conveyed by said party of the first part by deeds recorded among the Land Records of the District of Columbia, in Liber 2352, folio 101, Liber 2385, folio 196, Liber 2422, folio 29, Liber
172 2388, folio 494, Liber 2424, folio 410, Liber 2463, folio 468, Liber 2488, folio 496, and Liber 2539, folio 295.

Together with the improvements, rights, easements, privileges and appurtenances to the same belonging or in anywise thereto appertaining.

To have and to hold the said One Third undivided Interest in said land and premises with the appurtenances and hereditaments to the same belonging, unto and to the only use and benefit of said party of the second part, his heirs and assigns, with special warranty, (recorded encumbrances excepted).

And these presents further witness that the said party of the first part hath constituted and appointed, and by these presents doth constitute and appoint W. Parker Smith its true and lawful attorney in fact, for it and in its name, place and stead, to appear before any officer authorized by law to take acknowledgements of deeds conveying land situated in the District of Columbia, and to acknowledge these presents to be the act and deed of said Northwest Eckington Improvement Company, in order that the same may be duly recorded among the Land Records of the said District.

In testimony whereof, the said party of the first part has caused these presents to be signed by Samuel C. Redman, its President, attested by T. C. Daniel its Secretary, and its Corporate Seal to be hereunto affixed on the day and year first herein written.

NORTHWEST ECKINGTON IMPROVEMENT COMPANY,
[SEAL.] By SAMUEL C. REDMAN, *President.*

Attest:
T. C. DANIEL, *Secretary.*

Signed, sealed and delivered in the presence of—
THOS. ARMAT.

DISTRICT OF COLUMBIA, *to wit:*

I, S. A. Terry, a Notary Public in and for the District aforesaid, do hereby certify that W. Parker Smith, who is personally well known to me to be the attorney in fact for the Northwest Eckington Improvement Company, the grantor in, and the corporation which executed the foregoing and annexed deed, dated January 16"

A. D. 1903, personally appeared before me in said District and acknowledged the said deed to be the act and deed of said Northwest Eckington Improvement Company.

Given under my hand and Notarial Seal this 16" day of January, A. D. 1903.

S. A. TERRY,
Notary Public.

[SEAL.]

Endorsed: Recorder of Deeds, Dist. of Cola. Jan. 19, 1903. Received for record Jan. 19 A. D. 1903 2.20 P. M. and recorded in Liber No. 2707 fol. 130 *et seq.* one of the Land Records of the District of Columbia. Jno. C. Dancy, Recorder.

173 EXHIBIT DEFENDANT # 4.

Eckington Improvement Company, 1410-1412 G Street N. W.

WASHINGTON, D. C., *August* 11, 1903.

DEAR MR. CAMPBELL: Your letter with enclosures received, I paid the note in full at the Washington Savings Bank, I took up the Storage Warehouse Deal—with McLeran yesterday. He said he was still working on the negotiations necessary for him to perfect before obligation himself. McGill is away for two weeks on his vacation, McLeran told me yesterday that overtures has been made to him within the hour by the Railroad people to setile out of court the payment for his lots in the Square they want. He says as soon as this is done it will put him in funds which will enable him to make the deal.

I have made up my mind not to wait on anybody but try and push this deal through. It has great merit and should be put through. I realize as you suggest its great importance. Am glad to hear you are investigating the warehouse question. I made some observations and enquiries in Balto. and was surprised at the size and number of warehouses, and how important they have become as factors in the Commercial business of the large cities.

Mr. Wallace has just been in and gives a good account of the progress he is making on the new Apartments. Have just seen Mr. Latimer of Smith Co. He says he thinks we ought to reduce the rent of the first floor flats on the north side to 17$. What do you think of it!

The upper west flat has been rented for 21$ per month and there are two parties after the west lower Flat.

I send you statement left by Mr. Wallace for me to inclose.

I have just rec'd copy of your letter sent in reply to one from Mr. Armat. It covers the case admirably, and I appreciate the unsolicited justification of myself in the matter.

Everything being done by the railroads are benefiting our Eckington property and I have new enquiries as to railroad frontage on our property. After putting in tomorrow an effort on some appartments I have in view—will write you again.

Giving you and your family my best wishes, I am very truly y'r friend,

In haste,

T. CUSHING DANIEL.

EXHIBIT DEFENDANT #5.

Eckington Improvement Company, 1410-1412 G Street N. W.

WASHINGTON, D. C., *August* 12, 1903.

DEAR MR. CAMPBELL: McLeran is still working on his end of the line. I called on Thos. R. Riley to-day and I told him that if he could not swing the 1/3 third, we would like to have him in the enterprise even if he took a smaller interest, and this would
174 put him in position as a director of the company to increase his holdings later. This idea seemed to take him, and he said he would reconsider the proposition on this line—as he believed in it, and would like to go in with you and myself, I am working on another lead that may bring results.

Mr. Roche's man was in yesterday, and *and* said we had overlooked his note for $117.00 and interest; that it came due on August 1st. Also stated that he had finished the work on the new row on the south side of R. I. Ave. It would be wise to pay the over due note so as to give another for the last job.

Hastily & Truly yr's,

T. C. DANIEL.

The above party is M. Roche, Mantels.

EXHIBIT DEFENDANT # 6.

Eckington Improvement Company, 1410-1412 G Street N. W.

WASHINGTON, D. C., *August* 20, 1903.

DEAR MR. CAMPBELL: Your letter with inclosures rec'd. I found the note had not been discounted by Rudolph West & Co. so I send you a renewal note which has to be signed by you before delivery to Rudolph West & Co.

I am still working on McLeran and Riley, McLeran is busy every day on the testimony before Condemnation Committee.

I tried to accommodate Mr. Riley's situation yesterday by submitting and amended proposition *whis* is now being earnestly considered by him. I notice the article as to Daniel's position, the proposed financial bill.

This legislation is in the interest of the Bankers, and I am afraid they will resort to the usual means of tightening the money market to influence legislation. I think it important for us to utilize the next 60 days for all it is worth as it may be hard to do anything after that time.

It would be well for you to be back next Monday in order that we may get together and push things through.

With best wishes,

Hastily y'rs, T. C. DANIEL.

EXHIBIT DEFENDANT # 7.

Eckington Improvement Company, 1410-1412 G Street N. W.

WASHINGTON, D. C., *August* 21, 1903.

DEAR MR. CAMPBELL: It occurred to me that Riley was the best man we could have associated with us in the warehouse deal in order to insure its success owing to the extensive business experience he has had.

I told him early in the week that sooner than have him miss the opportunity I would try and secure the third interest for him
175 part cash and balance to be secured by deed of trust on this one third to be turned into our Co.

If Thos. R. Riley gives a trust secured upon this 1/3 and evidenced by his deed of trust notes I think I can use the notes in the Nat. Safe Deposit & Trust Co. for Mrs. Franz. The cash payment would help us out and I think we could use the trust notes as well.

I have just returned from the third interview I have had with him this week. He said he was perfectly satisfied with the proposition and that it was only a question of the cash and that he was now waiting for about $10,000, which one of his best customers promised to pay him in the next few days. And that he thought he would be ready to close by the time you got back Monday.

He was very complimentary to us both and said he would like to be in business with us, as he thought we both had good judgment and we would make a good team. We have a good thing but should take no chances at this time.

Hastily y'rs, T. CUSHING DANIEL.

EXHIBIT DEFENDANT # 8.

Eckington Improvement Company, 1410-1412 G Street N. W.

WASHINGTON, D. C., *August* 24, 1903.

DEAR MR. CAMPBELL: As I wrote you I think Riley is going in with us, I will see him again tomorrow. I think he wants to see you before going in. Can tell better tomorrow. McLeran is waiting for McGill to return, and the jury's award in the condemnation proceedings.

McGill will be back this week.

I enclose you two bank notices and blank notes to be used. Am glad to hear you are still investigating the warehouse question. I heard yesterday that Willie Fitzhugh's farm in Vicksburg made $12,000. last week on an advance in oats they had stored.

It's very hot here, and looks as if a hot spell was upon us. I expect to go down to Ocean City next Friday so it might be just as well for you to return Thursday, and by that time it may be pleasant here again.

With best wishes,

Truly y'rs,

T. C. DANIEL.

EXHIBIT DEFENDANT # 9.

Eckington Improvement Company.

WASHINGTON, D. C., *August* 25, 1903.

DEAR MR. CAMPBELL: I saw Mr. Riley again this morning and he says the banking situation is getting better, and that he was so informed by his banking people. And that he was figuring on putting some paper he had through the banks and paying all cash for the interest in the railroad frontage. Also saw McLeran
176 this morning and he said the testimony before the Commission would be completed this week, and he thought they would receive a good price for their ground.

Mr. Wallace was furnished last Saturday with the release form filled up to be signed by the material men on the R. I. Ave. houses.

The renting demand is *increases* and we will have no difficulty in filling them.

Hastily,

T. C. D.

EXHIBIT DEFENDANT # 10.

WASHINGTON, D. C.

1st Step. Get R. to sign an agreement to release his interest in exchange for a credit of 15 + 5 on his part of the present trust.

2nd Step. N. W. Eckington Co. and C. M. C. to make separate transfers of the title to entire frontage to trustee.

3rd Step. Trustee to deed to W. T. Storage Co. which stock will be held by T. C. D. and C. M. C.

4th Step. W. T. Storage Co. to borrow 20 cents per foot (32000) or 10 cents ($16,000).

EXHIBIT W. D. H. No. 1.

Capital, $1,000,000.

The National Safe Deposit, Savings and Trust Company of the District of Columbia.

WASHINGTON, D. C., *M'ch* 12, 1901.

T. C. Daniel, Esq., 1105 F Street, Washington, D. C.

DEAR SIR: You are hereby notified that unless all past due interest on the balance of the three notes for $12,500. each, drawn by you

(payable to the order of Jacob Franz) July 28, 1891, and secured by Deed of Trust on Lot 35 "Metropolis View," is paid on or before the close of business on April 30, 1901, the property securing these notes will be advertised for sale under the terms of the trust.

Very respectfully,

THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY OF THE DISTRICT OF COLUMBIA,

By —— ——, *President,*

For the Executors, Estate of Jacob Franz, Dec'd.

EXHIBIT W. D. H. No. 2.

Memorandum.

DECEMBER 12, 1902.

It has been agreed as of this date, by and between T. Cushing Daniel and Elenora T. Franz by her attorney, The National
177 Safe Deposit, Savings and Trust Company of the District of Columbia, that the amount now due on the three promissory notes hereto attached, all signed by said T. Cushing Daniel by the name of T. C. Daniel, dated July 28, 1901, and secured by Deed of Trust upon Lot 35 in "Metropolis View," each of said notes being in the amount of Twelve Thousand Five Hundred Dollars, and one thereof showing various credits on account of principal, shall be fixed as follows:

Amount of principal and interest due June 16, 1902, Thirty-two Thousand Five Hundred Dollars; payment on account of principal as of that date Five Hundred Dollars, leaving a balance then due of Thirty-two thousand Dollars. The amounts of interest due on the different notes being uncertain and in dispute between the holder of the notes and the maker thereof, it is agreed that the amount of Thirty-two Thousand Dollars above mentioned, which includes both principal and interest, shall be regarded as a basis on which future interest shall be paid, at the rate of six per cent. per annum, payable semi-annually.

T. CUSHING DANIEL,
ELENORA T. FRANZ,
By THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY OF THE DISTRICT OF COLUMBIA, *Her Attorney,*
By WM. D. HOOVER, *Trust Officer.*

For Identification J. A. L. No. 4.

EXHIBIT DEFENDANT No. 11.

WASHINGTON, D. C., *Dec.* 5, 1903.

Citizens' National Bank of Washington City.

Order

Pay to T. C. Daniel or [bearer]* One hundred and seven 95/100 Dollars.

Paid.

$107.95. C. M. CAMPBELL.

Endorsed: T. C. Daniel. (1 Bank Stamp.)

For Identification J. A. L. No. 5.

EXHIBIT DEFENDANT No. 12.

No. 1032. WASHINGTON, D. C., *Dec.* 23, 1903.

Citizens' National Bank of Washington City.

Pay to the order or T. C. Daniel One Hundred Dollars.

Paid.

$100.00. C. M. CAMPBELL.

Endorsed: T. C. Daniel. (1 Bank Stamp.)

178 EXHIBIT DEFENDANT No. 13.

Copy.

DEC. 6, 1902.

MR. CAMPBELL: Mr. Winfield says he has all the tax bills and they amount to 957.50
Lots released ..... 2250.
Lots purchased ..... 300.

3507.50
1st. payment on loan ..... 2500.

Balance 1007.50

This would leave the statement as above. Mr. Winfield says if the taxes are not paid to-day another calculation will have to be made Monday.

T. C. D.

[* Word enclosed in brackets erased in copy.]

Memorandum.

Extracts Taken from Exhibits Defendant Nos. 14 to 22 and 32 as per Stipulation of Counsel.

Nov. 15,	1902.	Thos. R. Riley, Lumber	$1,565.00
" "	"	Thos. R. Riley, Mill work	1,711.00
" "	"	Thos. R. Riley, Glass	306.00
Nov. 24,	"	The Mathy Co., Galvanized Iron	196.00
" 25,	"	Huddleston, Mansard roofs & towers..	125.00
" 21,	"	Fahey & Co., Foundations & concreting.	545.00
Dec. 6,	"	W. N. Ward, Plumbing	1,943.00
Nov. 26,	"	Albert M. Cowell & Son, Bricks & Bricklaying	4,255.00
Feby 16	"	J. H. Kuehling, Electric work	98.00
Feby, 27,	1903.	Rudolph West & Co., Hardware	187.32
Feby. 20,	1903.	J. C. Thompson, Plastering	1,300.00
		Muddiman, Gas Fixtures	120.00

EXHIBIT DEFENDANT 23.

JAN. 6, 1904.

DEAR MR. REDMAN: I enclose you a notice I received to-day. I have no business with Mr. Cull about this matter, having already offered to fulfill my contract to the letter, *and shall not see him.* If the deal falls through because I decline to let Mr. Daniel disburse *my* money for *joint* debts, without him contributing an equal amount, it can fall through.

The amount in dispute, as I understand it, is my bill for money advanced, Mr. Daniel requiring me to file vouchers. This I am willing to do and I am willing to have the deal go through and leave this amount tied up until we reach a settlement; and I would probably be willing to have it deposited in Riggs' Bank to the joint order of us three, or in the Citizens' Bank where we have so much paper, at my option. I shall consult my counsel on this point but I now see no objection to it, providing a settlement is made as soon as my account is verified.

179

I do this to meet Mr. Daniel's main point, in a way that I believe entirely honorable, and to place the responsibility where it belongs.

Hastily Yrs.,

C. M. CAMPBELL.

With this settlement made I am entirely willing to join hands and take care of future obligations as we have in the pass. I now think the houses should be sold.

EXHIBIT DEFENDANT No. 24.

JAN. 6, 1904.

Mess. Ralston & Siddons.

GENTLEMEN: I have your statement under date of Jan. 5 that the acct. I have rendered of money disbursed from my private acct. for the benefit Messrs. T. C. Daniel, S. C. Redman and the N. W. Eckington Improvement Co. to the amount of several thousand dollars, under signed agreement that it was to be returned from the proceeds of the first sale of land, is unsatisfactory and that they require further vouchers &c. The method of keeping that account, the check paid out being used as a voucher, was frequently explained to Mr. Daniel and he not only fully approved but pursued the same method himself.

However the request is perfectly proper and I shall proceed at once to get bills with credits thereon for money paid by me. I shall write for them to-day and hope to be able to satisfy all parties in a few days.

I am gentlemen, with sincere regards,

Very truly yrs.,

C. M. CAMPBELL.

I offered to let the entire sum involved about $4000, in these extra payments by me be held back by the attorney in charge of the settlement, pending the examination and checking of my accounts rendered.

THIS PAGE IS BOUND VERTICAL IN BOOK

Maker.	Endorser & payee.	Time.	Date.	Amount.	Date of protest.
[C. M. Campbell] *.....	J. Cushing Daniel..... T. Cushing Daniel..... C. M. Campbell.....	Ninety days...	1902, Sep. 22	$2,000	Paid.
C. M. Campbell.....	T. C. Daniel.....	" " ...	1903, Sep. 21	1,750	Paid.
C. M. Campbell.....	T. C. Daniel..... C. M. Campbell.....	" " ...	1903, June 22	2,000	Paid.
C. M. Campbell.....	T. C. Daniel.....	" " ...	1903, Mar. 25	2,000	Paid.
[C. M. Campbell] *.....	T. Cushing Daniel..... C. M. Campbell.....	" " ...	1902, Dec. 22	2,000	Paid.
C. M. Campbell.....	T. C. Daniel.....	" " ...	1903, Dec. 21	1,400	Paid.

[* Names enclosed in brackets erased in copy.]

181 EXHIBIT DEFENDANT #31.

DEAR MR. WINFIELD: I see no good reason for again consulting Mr. Ridout- point in question. The only way I will settle this case is in accordance with the agreement. If agreements are no longer binding between gentlemen a petition had better be filed for partition and the property divided, so each can do as he likes.

I am willing if the agreement is followed out to go ahead and loyally help the Company in every way possible, putting money back in again. But I prefer each transaction to stand on its own bottom. I will absolutely not settle on any terms that permits the division of this money until my advances are settled and repaid to me out of it. If Mr. Daniel is honest in his point—and I do not question it—that he is only waiting to have the acct. I have rendered checked off, *then let him keep back only so much as will guarantee this.*

If the amt. I claim for money advanced, per solemn pledge and agreement, is held back, the remainder can be distributed and the deal closed.

It is cold where I write & I write hastily, but I trust you can read it.

Very Sincerely Yrs.,

C. M. CAMPBELL.

Jan. 5.

Memorandum.

For Exhibit Defendant No. 32 see Extracts of Exhibits page 378 of this record.

EXHIBIT DEFENDANT No. 33.

Note given March 14, 1903 for $400. Paid in two payments: May 15, Washington Savings Bank $204.35; July 15, ditto $204.35.

(2) Notes given June 27, 1903, for $400. Paid as follows:

Sept. 8.	Wash. Savings Bank	$204.35
Sept. 30.	Bell & Co.	103.
Oct. 28.	" " "	100.50

EXHIBIT DEFENDANT No. 33½

$200.00. WASHINGTON, D. C. *July* 1", 1903. No. 4978.

Sixty days after date, for value received we promise to pay to Fahey & Co. or order the sum of Two Hundred Dollars at the Washington Savings Bank, Washington, D. C. with interest at the rate of 6 per centum per annum until paid.

Due Aug. 30.

N. W. ECKINGTON IMPROVEMENT CO.,
By SAM'L C. REDMAN, *Pres't,*
Address Room 11 Ames Bldg., 1410 G. St.

Endorsed: Fahey & Co. C. M. Campbell T. C. Daniel C. J. Ortlip Note 200. Interest 2. 202.

182 UNITED STATES OF AMERICA,
District of Columbia, to-wit:

Be it known, That on the 31" day of August, in the year nineteen hundred and three, Seth A. Terry, Notary Public, residing in the said District, duly commissioned and sworn, at the request of Washington Savings Bank, Presented at Washington Savings Bk. the original Note hereto attached, and demanded payment thereof whereunto I was answered by the Book Keeper "No such account."

Therefore, I, the said Notary, at the request aforesaid have protested, and by these presents do solemnly protest, against the drawer and endorsers of the said Note, and others whom it may or doth concern, for all costs exchange, charges, damages and interest suffered or to be suffered for want of payment thereof. And on the same day I deposited in the Post-Office of Washington, D. C., notice of protest to maker and each endorser, viz:

Notice for	N. W. Eckington Imp. Co.	Directed to	1410 G. St. N. W. City
Do.	Faheer & Co.	Do.	Ohio Natl. Bk. Bldg. City
Do.	C. M. Campbell.	Do.	1343 Harvard St. N. W. "
Do.	T. C. Daniel.	Do.	627 E St. N. W. City.
Do.	C. J. Ortlip.	Do.	1139 5th St. N. E. City.

In testimony whereof, I hereunto set my hand, and affix my Notarial Seal of Office, the day and year aforesaid.

S. A. TERRY,
Notary Public.

Protesting	$1.75
Notice	.50
Postage	.10
	$2.35

Recorded, Book L page 38.

EXHIBIT DEFENDANT #34.

$200 00/100. WASHINGTON, D. C., *August 28th,* 1903.

jointly and severally
Thirty days after date we ^ promise to pay to the order of Fahey & Co. Two Hundred X 00/100 Dollars at Bell & Co.
Value received.

NORTHWEST ECKINGTON IMPROVEMENT CO.,
By SAMUEL C. REDMAN, *President.*

Due Sept. 28.

[Stamped across face in red ink:] Cancelled.

Endorsed: Fahey & Co., C. M. Campbell, T. C. Daniel. I hereby waive demand Notice & Protest on the within Note. C. M. Campbell, T. C. Daniel. Northwest Eck. Imp. Co. $200.00. Sept. 28.

EXHIBIT DEFENDANT 35.

WASHINGTON, D. C., *Sept. 28th*, 1903.

One month after date we promise to pay to the order of Fahey & Co., One hundred Dollars at Bell & Co., Bankers. (Bank stamp.) Value received with interest at 6% per cent. per annum.

NORTHWEST ECKINGTON IMP. CO.,
By SAMUEL C. REDMAN, *President*.

Due Oct. 28th, 1903.

Endorsed: [Fahey & Co., C. M. Campbell, T. C. Daniel.]* 14244 N. W. Eck. Imp. Co. 100.50. Oct. 28.

EXHIBIT DEFENDANT 36.

No. 672. WASHINGTON, D. C., *Jan.* 30, 1903.

Citizens' National Bank of Washington City,

Pay to the order of N. R. Grimm Twenty-five Dollars.
Paid.
$25.00. C. M. CAMPBELL.

Endorsed: N. R. Grimm. (1 Bank Stamp.)

J. A. S. (for Identification), John A. Sweeney.

This agreement, made this Tenth day of December, A. D. 1902, between the Northwest Eckington Improvement Company, a Virginia Corporation, T. Cushing Daniel, Samuel C. Redman and Charles M. Campbell,—

Whereas, the said parties hereto, and the Sanitary Dwellings Company, a Corporation, heretofore entered into a certain agreement to sell certain real estate to the said Sanitary Dwellings Company,—

And whereas, the said Sanitary Dwellings Company did not comply with the provisions of said agreement on its part, and desires to be released from all obligations under said agreement, and is willing to release the other parties hereto from all obligations thereunder.

And whereas, heretofore by agreement dated October 23rd, 1902, the said parties hereto other than the said first mentioned corporation, entered into an agreement as hereinafter set forth.—

And whereas, at a general meeting of the stockholders of said Northwest Eckington Improvement Company, held after due notice, at Alexandria, Virginia, on the — day of —— A. D. 190— the said agreement of October 23rd, 1902, was ratified, approved and adopted,

[* Words enclosed in brackets erased in copy.]

as an agreement on the part of said last mentioned corporation and the proper officers of the said corporation,—

184 Now therefore this agreement witnesseth, that,—

Whereas a contract was entered into March 13, 1902, between T. C. Daniel and S. C. Redman and the Northwest Eckington Improvement Co., a corporation, and C. M. Campbell, stipulating for the services of said Campbell, it is further agreed, while preserving to said Campbell any rights he may have under said contract, as follows:

1. In consideration of the services said Campbell has already performed and for the purpose of securing his further services and cooperation in the handling and improvement of said property, it is agreed to make certain extension of the provisions of said contract.

2. It is now decided to release the Sanitary Dwellings Company, if necessary, from any obligations it may have assumed in regard to any agreement to purchase said property.

3. The said Daniel, Redman and the Northwest Eckington Improvement Company have decided to improve and market said property, as fast as may be possible, by building houses thereon.

4. To this end they desire to utilize the skill of said Campbell as a builder and his assistance financially.

5. It is agreed by said Daniel, Redman and the Northwest Eckington Improvement Company to employ said Campbell as a skilful builder in the erection of said houses, he to take charge of said work, with such assistance as the other parties to this contract may be able to furnish, and pursue such work industriously and with all the ability and skill he can bring to the work.

6. In the borrowing of the money that may be needed in developing said enterprise he is to use his credit by joining the other parties to this contract in the making or endorsing of any notes that may be required in negotiating the necessary loans for the making of said improvements and in paying off the loan of $32,000 now due on said property. In doing this account is to be taken of all moneys and interest he has already advanced under contracts in relation to said property already entered into between the parties hereto. And any sums advanced or to be advanced by any of said parties for the same purpose under said agreements is likewise to be accounted for.

7. It is proposed to erect at once five houses on said property and follow them with others as soon as such a course is warranted by the results and approved by the judgment of the parties to this agreement, said Campbell to industriously push said improvements with his best skill and ability, as provided in paragraph 5, herein, without any further compensation for his services than are provided for herein.

8. In return for said undertaking on said Campbell's part he is to become possessed of an undivided one-third interest in said property.

9. The said Corporation party hereto agrees to execute at once a conveyance of said undivided one-third interest to said Charles M. Campbell in fee simple.

10. The said Corporation party hereto agrees to indemnify the

said Charles M. Campbell against all liability or loss of every nature, including counsel fees and expenses of litigation which
185 he may in any manner suffer, or incur for the benefit of said corporation under this agreement.

The said T. Cushing Daniel and Samuel C. Redman hereby release the said Northwest Eckington Improvement Company and said Charles M. Campbell from all rights, interest or claim which they claim or could claim under any former agreement.

In witness whereof the said parties hereto have hereunto set their hands and seals on the day and year first herein written.

NORTHWEST ECKINGTON IMPROVEMENT COMPANY,
By ——— ———, *President.*
——— ———. [SEAL.]
——— ———. [SEAL.]
——— ———. [SEAL.]

Attest:

———— ————,
Secretary of Northwest Eckington Improvement Company.

Memorandum.

For all other exhibits marked J. A. S. (for identification) John A. Sweeney; see Extracts of Exhibits Defendant 14 to 22, page 378 of this record.

Checks Produced by Defendant on Order of the Court (p. 177, &c.).

Received of Charles M. Campbell checks as follows:

Date.	Payee.	Am't.	Remarks.
1902.			
June 7	C. D. Burnley	$17.28	Sanitary Dwellings Co.
" 14	"	14.40	" "
21	"	15.84	" "
28	"	17.28	" "
17	T. C. Daniel	500.	Trust.
26	"	122.91	Taxes.
July 5	C. D. Burnley	12.86	Sanitary Dwellings Co.
12	"	15.84	" "
19	"	10.58	" "
26	"	11.29	" "
15	Marie Seemers	4.15	" "
Aug. 2	C. D. Burnley	10.54	" "
15	"	18.00	" "
16	"	10.	" "
Sept. 13	"	15.	" "
20	"	15.	" "
27	"	25.	" "
18	McGill & Wallace	51.	Tax Bill. "
7	Union Savings Bk	.50	
Oct. 25	A. B. Graham	10.	Stock Book & Seal.
Dec. 8	Collector of Taxes	957.55	Taxes.
9	"	19.35	District Charges.
9	"	65.	"
31	Ralston & Siddons	300.	Lot bought.
24	S. M. Wallace	80.	Carpenter $13. pd. C. M. C.
25	J. W. Keys	15.	" debt.
26	A. M. Cowell	300.	Bricklaying.
31	A. Plant, Jr.	50.	Architect.

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Date.	Payee.	Am't.
1903.		
Jan. 3	A. M. Cowell	200.
10	A. M. Cowell	200.
10	S. M. Wallace	25.
17	"	25.
17	A. M. Cowell	200.
23	S. M. Wallace	40.
23	A. M. Cowell	300.
30	S. M. Wallace	25.
"		
"	A. M. Cowell	250.
Feb. 6	"	400.
13	A. M. Cowell	1175.
19	Wm. N. Ward	50.
14	F. H. Smith Co.	25.
20	S. M. Wallace	55.
21	A. M. Cowell	300.
13	S. M. Wallace	75.
28	R. W. Riley	50.
27	S. M. Wallace	90.
		6559.37

Date.		Payee.	Amt.
1903.			6559.37
March	4	Collector of Taxes	90.00
	7	S. M. Wallace	125.00
	4	Henry A. Farnham	9.30
	7	L. W. Riley	25.
	6	J. W. Keys	45.
	13	S. M. Wallace	35.
	13	James C. Thompson	275.
	18	Collector Taxes	112.
	"	" "	19.35
	21	L. W. Riley	9.50
	20	H. C. Gossage	25.
	27	A. M. Cowell (for Thompson)	125.
	20	J. W. Keys	42.
	14	Huddleston & Co.	50.
	27	G. M. Huddleston	65.
	30	Harvey Gossage	50.
	24	J. B. Shinn	10.
	28	The Mathy Co.	100.
	27	J. W. Keys	70.
April	2	McGill & Wallace	9.
	3	A. M. Cowell (for Thompson)	450.
	3	"	110.
	6	G. W. Huddleston	10.
	10	A. M. Cowell	400.
	"	J. W. Keys	90.25
	"	A. M. Cowell (for Thompson)	175.
	3	J. W. Keys	83.
	10	Collector Taxes	68.
	"	H. C. Gossage	50.

187	17	A. W. Cowell	400.
	"	J. W. Keys	53.
	"	S. M. Wallace	8.
	"	Harry Gossage	20.
	24	Albert Cowell	450.
	"	J. W. Keys	86.25
	25	H. C. Gossage	35.
	24	S. M. Wallace	4.
	29	J. C. Thompson	10.
May	1	A. M. Cowell	500.
	"	J. W. Keys	63.
Apr.	29	Wash. Gas Co	10.
May	6	J. C. Thompson	85.
	8	Albert Cowell	450.
	1	S. M. Wallace	3.
	"	"	2.
	8	J. W. Keys	42.
	"	H. C. Gossage	15.
	"	S. M. Wallace	1.50
	11	Ralston & Siddons	400.
	13	Wash. Savings Bk	204.
	16	Albert M. Cowell	300.
	14	Citizens' Nat. Bk	75.
	16	I. W. Ford	300.
			12803.52
1903.			
May	16	H. C. Gossage	$45.
	16	J. W. Keys	72.
	22	"	77.50
	"	H. C. Gossage	30.
	26	Knott & Mohler	100.
	"		[75].*
	29	Geo. M. Huddleston	50.
	22	Wm. T. Brooks	50.
June	1	S. M. Redman	304.50
May	29	S. M. Wallace	11.
	"	Wash. Gas Co	13.10
	"	J. C. Thompson	23.
	"	J. W. Keys	84.
	"	H. C. Gossage	25.
	"	S. M. Wallace	20.
June	4	Wm. N. Ward	500.
	"	Wash. Gas Co	52.40
	5	Estate Chas. Ford	1000.
	"	J. C. Thompson	140.
	6	Lincoln Nat. Bk	200.
188	5	J. W. Keys	80.
	6	The Mathy Co	50.

*(Struck out) H. J. S.

	5	S. M. Wallace	5.
	12	J. C. Thompson	225.
	"	S. M. Wallace	5.
	"	J. W. Keys	48.
			1805.40
	19	J. C. Thompson	105.
	"	S. M. Wallace	30.
	"	H. C. Gossage	15.
	"	S. M. Wallace	5.
	20	Darrell Adv. Agency	2.
	26	J. C. Thompson	30.
	26	S. M. Wallace	30.
July	2	"	2.25
	"	"	5.
	"	"	39.37
	"	J. C. Thompson	60.
	3	Mrs. J. C. Thompson	10.
	14	Citizens' Nat. Bk	37.50
June	26	H. C. Gossage	15.
July	3	Nat. Mosaic Co	32.
	10	J. C. Thompson	65.
	"	S. M. Wallace	30.
	"	H. C. Gossage	20.
	"	S. M. Wallace	7.
	2	H. C. Gossage	15.
	10	Jas. D. Masson	15.
	13	Knott & Mohler	37.10
	15	Wash. Savings Bk	4.35
	"	A. M. Cowell & Sons	50.
	17	J. C. Thompson	15.
	"	"	75.
	"	John C. Brown	15.
	"	Jas. Masson	5.
	"	Wm. Martin	10.
	"	H. C. Gossage	15.
	"	Jas. Masson	15.
			15825.59
1903.			
July	17	S. M. Wallace	30.
	"	"	3.50
	24	A. M. Cowell	100.
	"	S. M. Wallace	30.
	"	"	32.
	"	"	20.
	25	J. C. Thompson	50.
189	24	Col. Sand Co	50.
	27	Wm. N. Ward	500.
	31	S. M. Wallace	88.50
	30	Barber & Ross	125.

	31	A. M. Cowell	100.
	24	H. C. Gossage	15.
Aug.	8	S. M. Wallace	80.
	17	"	960.
	20	Rudolph West Co	100.
	21	S. M. Wallace	95.
	29	"	85.
Sept.	4	"	65.
	8	Wash. Savings Bk	4.35
	3	Lincoln Nat. Bk	9.
	8	Metropolitan	86.28
	9	Wash. Gas Co	58.
	6	S. M. Wallace	45.
	11	"	62.
	"	"	30.
Sept.	8	Citizens Nat. Bk	107.50
	14	Second Nat. Bk	109.
	17	A. M. Cowell	100.
	19	J. C. Thompson	60.
	18	S. M. Wallace	49.
	18	" " (for C. Stickler)	50.
	25	S. M. Wallace	48.
	"	Charles Stickler	50.
	28	Col. Sand Co	103.
Oct.	2	Wm. N. Ward	50.
	"	S. M. Wallace	53.50
	"	Charles Stickler	50.
	7	Lincoln Nat. Bk	125.01
	7	John E. Mitchell	77.14
	9	S. M. Wallace	46.
	12	Citizens Nat. Bk	537.50
	10	M. Roche	119.54
	12	Barber & Ross	100.
	15	A. M. Cowell	100.
	16	S. M. Wallace	30.25
	15	Wash. Gas Co	19.
	9	Aaron Smith	25.
	19	Col. Sand Co	66.37
	21	The Mathy Co	100.
	20	Knott & Mohler	48.24
	"	Warren & Dyer	45.05
	27	S. M. Wallace	25.
	"	Wm. N. Ward	500.
			20579.32

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1903.

Oct.	28	Col. Nat. Sand Co	100.50
	28	Citizens Nat. Bk	230.00
	30	Knott & Mohler	6.45
Nov.	2	A. M. Cowell	80.

	7	S. M. Wallace	20.
	6	Wm. N. Ward	100.
	13	S. M. Wallace	15.
	18	Thos. R. Riley	1.
	19	Rudolph West & Co	143.08
	30	S. M. Wallace	25.
Dec.	1	Wash. Gas Co	209.
	2	W. H. Spelshouse	48.10
	5	S. M. Wallace	15.
	12	"	15.
	14	Rudolph West & Co	109.55
	14	Cash (T. C. D.)	57.50
	28	Thos. R. Riley	368.
			22122.50

Additional List of Checks Given by Defendant in Connection with the Enterprise.

All checks drawn on Citizens' National Bank.

			*22122.50
March	7, 1903.	Kuehling and Co	$35.00
May	28, 1903.	" "	35.00
June	6, 1903.	" "	20.00
December	2, 1903.	Central N't'l Bank	101.50
January	23, 1903.	Standard Stone Company	75.00
January	30, 1903.	" " "	150.00
May	26, 1903.	" " "	75.00
February	26, 1903.	John E. Mitchell	3.50
June	4, 1903.	Hutchinson and Harbin	35.00
October	10, 1903.	" " "	50.00
December	1, 1903.	" " "	28.75
May	13, 1903.	" " "	75.00
January	7, 1903.	Fahey and Co	200.00
February	7, 1903.	" "	100.00
May	13, 1903.	" "	200.00
			*23306.25

191 EXHIBIT COMPLAINANT No. 1.

Filed with Defendant's Testimony in Chief.

WASHINGTON, D. C., *June 19th*, 1902.

Whereas a certain agreement was entered into March 13, 1902, between T. Cushing Daniel, S. C. Redman and C. M. Campbell, which agreement was accepted by the Northwest Eckington Improvement Co., now this further memorandum witnesseth: That the Company which said Campbell agreed to organize, as stipulated in

[*In pencil in copy.]

said agreement, has been organized to our satisfaction; that the deed conveying said property to said Company has been prepared and properly executed and that the five hundred dollars which said Campbell this day advances to meet the requirements of the holder of the deed of trust on said property, is done upon acceptance of the above facts. Said transfer will be made upon the terms of acceptance noted in the minutes of the Sanitary Dwellings Co., which are accepted. All monies advanced by said Campbell in handling the property in question shall be returned *returned* to him out of first sales.

And all rights of said Campbell under said agreement of March 13, 1902, shall remain unimpaired.

[SEAL.] T. C. DANIEL,
[SEAL.] C. M. CAMPBELL.
NORTHWEST ECKINGTON IMPROVEMENT COMPANY,
—— ——, *President.*
T. C. DANIEL, *Sec'r.*

Testimony in Rebuttal.

Filed July 27, 1905.

In the Supreme Court of the District of Columbia.

Equity. No. 24463.

THE NORTHWEST ECKINGTON IMPROVEMENT CO. et al.
vs.
CHARLES M. CAMPBELL.

WASHINGTON, D. C., *May* 3, 1905,
Wednesday at 7:30 o'clock p. m.

Met, pursuant to notice, to take testimony in rebuttal on the part of the complainants.

Present: Frederick L. Siddons, Esq., Solicitor for the complainants; John Ridout, Esq., Solicitor for the defendant, the parties litigant and the Examiner.

192 Whereupon JOHN E. MITCHELL, called as a witness on the part of the complainants in rebuttal, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. SIDDONS:

Q. Mr. Mitchell, what is your business? A. Real estate broker.
Q. Did you ever occupy or share the office of Mr. T. Cushing Daniel, in your business? A. Yes, sir.
Q. When was that? A. That was after July, 1903.
Q. After July, 1903? A. Yes.

Q. And how long did you continue to share the office with him? A. Until about the middle of January, 1904.

Q. Do you know Mr. Charles M. Campbell, the defendant here? A. Yes, sir.

Q. Did you ever see Mr. Campbell in the office of Mr. Daniel? A. Oh, yes, many times.

Q. Did you ever hear any conversations occur between Mr. Daniel—T. Cushing Daniel and Mr. Campbell relating to an account of what was known as the Eckington Improvement Company enterprise? A. Yes, sir.

Q. I wish you would state what those conversations were, beginning with the earliest, as near as you can, and state about when it occurred, if you can. A. Well, I don't remember the time, but my connection began with some checks that Mr. Campbell brought in for me to try to render an account; some paid checks.

Q. Tried to render an account? A. Tried to render an account of the affair.

Q. For whom? A. For the three, Daniel, Campbell and Redman.

Q. Mr. Campbell asked you to prepare such an account? A. Yes, sir.

Q. And how did he happen to be preparing such an account at the time? A. Well, they had asked for an accounting; that one might be made out.

Mr. RIDOUT (to the witness): One moment, Mr. Mitchell. Just state what you personally know, and not what anybody told you about it.

The WITNESS: No, that ain't what they told me. I say they had asked to have a statement made out. In the office they had talked about it among themselves.

Q. Well, who had asked to have a statement of account made out? A. Mr. Daniel asked for it.

Q. Had asked whom? A. Had asked Mr. Campbell, and Mr. Campbell brought me the checks to try to make up the account.

Q. He did? A. Yes, sir.

Q. Now, did you hear any discussion—conversations between Mr. Daniel and Mr. Campbell about the making of such an account more than once? A. You mean talks about it?

193 Q. Requesting such an account to be made? A. Oh, yes; there were several talks about it while I had the checks, but I did not feel competent to make it under those circumstances, so I gave the checks back to Mr. Campbell.

Q. And you did not yourself, then, make up the account? A. No, sir. I started it but I did not go very far with it.

Q. Well, now, Mr. Mitchell, was such an account, while you were there in that office—was such an account ever produced by Mr. Campbell? A. He brought an account there of it, yes, sir.

Q. Were you there in the office when he brought the account in? A. Yes, sir.

Q. Now, I wish you would state what Mr. Campbell said when he brought the account in, and to whom he said it? A. Well, he brought the account in and he gave it to Mr. Daniel. He said there

was a statement of the account. He brought it in and said there was the statement of account.

Q. Mr. Campbell said that to Mr. Daniel? A. Yes, sir.

Q. Did you examine the account while he was there at all? A. Yes, sir. I went over it.

Q. Did you make any comments about it to Mr. Campbell? A. I made the comment about payments being made on notes that were discounted without credits being given for the proceeds of the notes.

Q. And what did Mr. Campbell say about that comment, if anything? A. Well, he said if there were any mistakes in the account they were against him.

Q. Did he say there were any mistakes in the account? A. No, he didn't say there were any. He said if there were any they would be against him.

Q. Was Mr. Campbell in the office any length of time on that occasion? A. No. I should judge about ten or fifteen minutes; something like that. I don't know whether it was any longer than that or not.

Q. What did Mr. Daniel say to Mr. Campbell, if anything, when he handed him the account? A. I don't think he said very much, if anything, as far as I can recollect.

Q. Was anything said by Mr. Campbell when he handed the account to Mr. Daniel about vouchers? A. Not to my knowledge.

Q. Did he produce any, when he handed him the account? A. No, sir.

Q. Mr. Mitchell, prior to the production of the account by Mr. Campbell, and during the period after it had been first called for, did Mr. Campbell at any other times say anything about the preparation of the account? A. He said that he had a bookkeeper working on it at his house.

Q. That was how long, if you can say, before the account was finally handed to Mr. Daniel, as you say? A. I should say two weeks; maybe three weeks. Something like that.

Q. Two or three weeks? A. Yes, two or three weeks.

194 Cross-examination.

By Mr. RIDOUT:

Q. That conversation, you say, occurred in August. When was it. in 1903—when did you say it occur-ed, in 1903? A. I didn't say the date.

Q. When did it, as a matter of fact? A. I don't know what date.

Q. Nor the month? A. No, sir.

Q. Are you certain about the year? A. Yes, sir.

Q. When, after that conversation occurred, was the first time you discussed it with anybody, and with whom? A. Why, I guess the next morning was the first time.

Q. With whom did you then dicuss it? A. Why, Mr. Daniel.

Q. What did you say to him on the subject? A. Why, I didn't say anything to him.

Q. What did he say to you? A. He showed me the account and

asked me to O. K. it as being the account that Mr. Campbell rendered.

Q. Did you, as a matter of fact, write your name on it, or make some other mark on it pursuant to that request? A. Yes, sir.

Q. What reason, if any, did Mr. Daniel give for asking you to do that?

Mr. SIDDONS: I object to the conversation that is asked for between Mr. Daniel and the witness the next morning, as not being responsive to the examination in chief.

Mr. RIDOUT: Its purpose is to test the recollection of the witness and show his bias.

Q. (Continuing:) What reason did he give for making that request of you? A. Didn't give any. Just simply requested it.

Q. When was the next time you discussed it with Mr. Daniel? A. Well, on several occasions after that; probably several days.

Mr. SIDDONS: Same objection.

A. (Continuing:) Mr. Daniel wanted me to go over it and try to make them up, and straighten it out.

Q. Did you ever try to do it? A. No, sir.

Q. Well, you say that was several days immediately after the—shortly after the account. When was the next time you discussed it with Mr. Daniel? A. I didn't discuss it any more at all.

Q. And all that time when you were discussing it you were in his office? A. Oh, yes.

Q. Were you an employé of his? A. No, sir.

Q. Associated with him in business? A. No, sir, no connection whatever.

Q. You were a tenant of his, were you not? A. In a way, yes, sir; desk room.

Q. Had some arrangement whereby you divided commissions with him, didn't you? A. In cases of sales made for him.

Q. And any sale you made while you were in his office you divided commissions with him? A. No, an equal division.

195 Q. Well, you made some division with him. I don't care what it was? A. Yes, sir.

Q. And you say you didn't have any further discussion about that time. When next did you discuss it with Mr. Daniel, if at all? A. Why, yesterday.

Q. What did he say to you then? A. He asked me to come here and testify.

Q. What about? A. About the account.

Q. Did he tell you what he wanted you to testify about? A. Yes.

Q. What? A. As to my recollection of it; of what happened.

Q. Just tell, as nearly as you can, what he said to you.

Mr. SIDDONS: Put my objection to this line of cross-examination as being immaterial and irrelevant, and not responsive to the examination in chief.

A. Well, I hardly know how to put that.

Q. Well, give it as nearly as you can, now? A. He asked me to

come here at half past seven tonight to testify to my recollection as to what occurred. Asked me as to my recollection of what occurred and I told him.

Q. What did you tell him? A. Practically what I have said here.

Q. Did he make any effort to refresh your memory by suggesting what did occur? A. Oh, no; no. He simply asked me what I recollected.

Q. Now, you are positive that you have told all that did occur, to your recollection, of the conversation between Campbell and Daniel in your presence, and that is such as you have given an accurate reproduction of what occurred there, are you? A. Well, did I say anything in there about commenting on the curtails?

Q. Yes, you said that. A. Yes, I said that; that's right.

Q. My question was, I believe, the substance of it was, whether you are sure now that you have given all the conversation that occurred? A. I am pretty sure, yes, sir.

Q. Do you recall any allusion made by Campbell to Daniel in respect of the $500 entry which was duplicated? A. No, sir.

Q. Do you say that that didn't occur? A. No, I didn't say that.

Q. Is that upon the theory that you are not certain that you remember all that did occur there? A. I don't pretend to be sure of all that occurred.

Redirect examination.

By Mr. SIDDONS:

Q. I think you said in your cross-examination that you signed the statement of account? A. Yes, sir.

Q. The morning after it had been produced there by Mr. Campbell? A. Yes, sir.

Q. I show you Complainant's Exhibit 7, and ask you to state if that is—whether that is the statement of account or not, and whether that is the memorandum that you signed with your signature to the top there? (Handing witness Exhibit 7, referred to.) A. 196 (After examining same.) That's right, yes, sir. Of course I don't know of any changes being made in it.

Q. You will notice that this memorandum was dated January *11*, 1904. A. No, that was the next morning.

Q. That was the morning afterwards? A. Yes, sir.

Recross-examination.

By Mr. RIDOUT:

Q. Mr. Mitchell, just one question that I forgot to ask you. Were you in the office during the whole of the conversation which ensued when this paper was produced by Mr. Campbell? A. Yes, sir. Mr. Campbell went out before I did.

Q. You don't of course, undertake to say that you were present during the whole of every conversation that occurred between Mr. Campbell and Mr. Daniel in that office? A. No.

——— ———.

Subscribed before me this — day of ——, 1905.

——— ———, *Examiner.*

Thereupon CALEB D. BURNLEY, called as a witness on the part of the complainants in rebuttal, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. SIDDONS:

Q. State your residence and occupation? A. Residence 501 Rhode Island Avenue, Northeast; occupation real estate in this city.

Q. You are acquainted, I believe, with both Mr. T. Cushing Daniel and Mr. Campbell and Mr. Redman? A. I am.

Q. With whom were you first acquainted, with Mr. Daniel or Mr. Campbell? A. Mr. Campbell.

Q. And when and where did you first make Mr. Campbell's acquaintance? A. In the office of the Canterbury Publishing Company, 918 F Street.

Q. What were you doing there at the time? A. I was selling encyclopædias; Appleton's encyclopædias.

Q. And what was the occasion of your meeting Mr. Campbell there.

Mr. RIDOUT: All of this is objected to as irrelevant, unless Mr. Siddons is cross-examining his own witness, the matter in controversy not involving any question about encyclopædias.

A. He came in purporting to buy an encyclopædia and I took him into the stock room and commenced to show him the encyclopædias, and then he told me he had a magnificent library at home; that he really didn't want any encyclopædia, but that he wanted a good man to sell some stock that he was going to put on the market, and I asked him what it was and he said it was a sanitary dwellings company; and I told him that I had had no experience sell-
197 ing stock, or anything of that sort. Well, he said, "what is your record here in selling encyclopædias?" I told him that Mr. Mills said I had made the best record that month of any of the salesmen in the office, and he offered me $75 a month to sell the stock and 10 per cent. commission. I told him——

Q. To sell what stock? A. The sanitary dwellings stock. I told him that I would have to think the matter over, because I didn't know him nor did he know me. Well, he said he was satisfied that if I sold encyclopædias that I could sell this stock, and he told me to come up to his house and we would talk the matter over, and he would tell me all about the company.

Q. Well, did you go to his house? A. Oh, on several occasions before I closed with him.

Q. Well, did you finally close with him? A. I did.

Q. Upon the terms that you have just mentioned? A. $75 a month and 10 per cent. commission on all sales.

Q. Now, up to the time that you were so employed by Mr. Campbell, had you met Mr. T. Cushing Daniel? A. Up to that time?

Q. Yes? A. No, sir.

Q. How long after you began your employment that you have just

detailed was it that you met Mr. Daniel? A. Oh, it was probably three or four weeks. I don't know exactly how long.

Q. Who paid you for your salary? A. Mr. Campbell. He was to pay me weekly and there was always difficulty in getting the pay; sometimes it was Saturday night and sometimes not until Monday morning.

Q. Well, can you fix approximately when this employment took place, Mr. Burnly? A. It was in May, 1902, I think.

Q. May, 1902? A. Yes.

Q. Mr. Burnley, subsequently were you employed in Mr. T. Cushing Daniel's office? A. After I came back from North Carolina, in 1903.

Q. About when in 1903, if you can recall? A. That was in the early summer of 1903.

Q. Early summer of 1903? A. Yes.

Q. And then you went into Mr. Daniel's office? A. Yes, sir.

Q. Now, while in Mr. Daniel's office, Mr. Burnley, did you ever see Mr. Campbell there? A. Frequently.

Q. Did you ever have any conversations with him? A. Oh, yes.

Q. Now, did you ever have any talk with him—conversations with him with regard to the what is sometimes called in this case the North-West Eckington Improvement Company enterprise? A. Yes. On one occasion we were discussing it and he said that the sanitary dwellings company had fallen down, and it was really a blessing in disguise, as they were going to develop the property with a better class of houses and make more money out of it than they would by selling the stock, and I told him at the time then that they ought to just give me double the salary for not selling this property than what I got for trying to sell it.

Q. Well, was the character of the houses and the number
198 of the houses discussed between you at all? A. Yes, they were. He told me they were going to build the whole ten and one-half acres up, and I asked him about the permanency of the employment, and that is the way that subject came up, and he said after it was built up why there would be plenty for me to do in looking after the houses; he would see that I had permanent employment.

Q. Do you refer now to talks with him when you were first employed in the sanitary dwellings company? A. Yes, sir.

By Mr. RIDOUT:

Q. Now, was that the question that was asked you that you have just answered? A. I so interpreted it.

By Mr. SIDDONS:

Q. I ask you now, Mr. Burnley, with respect to any conversation with Mr. Campbell after you returned from North Carolina about this enterprise. A. Oh. Now, Mr. Daniel and Mr. Campbell discussed the question frequently in my presence in the office there, and there was a map Mr. Daniel brought in at that time showing the subdivision of the property, and all that was discussed right

in my presence, and, of course, naturally, I joined in, being associated there with Mr. Daniel. I don't remember exactly just what was said, only in a general way.

Q. Now, Mr. Burnley, were you in the office of Mr. Daniel at any time when discussions or conversations occurred between Mr. Campbell and Mr. Daniel relating to any account? A. Why, yes I was in the office mighty near all the while, and Mr. Daniel frequently asked Mr. Campbell to present the account, or to furnish him with an account of the building enterprise.

Q. Now, can you tell when, or approximately when, those conversations commenced—what time of the year it was, Mr. Burnley? A. No, it was sometime previous to the closing of the Malnati sale.

Q. Would you undertake to say how long; approximately how long prior it was when you first heard Mr. Daniel ask Mr. Campbell for an account? A. Oh, I should say it was probably a month or six weeks. It may have been two months; I don't know.

Q. Now, Mr. Burnley, were you in Mr. Daniel's office at any time when Mr. Campbell brought in an account. A. I was.

Q. I wish you would state just what Mr. Campbell said at the time. A. He brought the account in the office and laid it down on Mr. Daniel's desk. He said, "Here is that account;" and Mr. Mitchell walked over and picked it up and looked at it, and said, "This is a funny account," and made some remark about there being no vouchers attached.

Q. On that occasion did Mr. Campbell say anything about the account being erroneous, or containing errors in it? A. He did not. He said that the account was all right, and if there was any error in it it was against him. That was his comment to Mr. Mitchell.

Q. I show you complainants' Exhibit 7, Mr. Burnley, and ask you to state what that is, if you know? (Handing witness com-
199 plaintiffs' Exhibit 7.) A. (After examining same.) That is the account that he brought in.

Q. Is this the account that Mr. Campbell brought in? A. Yes, sir, claiming that there was a difference due him of some thousands of dollars; something like that.

Q. I notice, Mr. Burnley, a memorandum at the top of it with the name "C. D. Burnley." A. That is my name and my signature.

Q. You signed that? A. I did, sir.

Q. When did you sign that? A. The morning after the account was brought in there.

Q. At whose request? A. Why, at Mr. Daniel's request.

Cross-examination.

By Mr. RIDOUT:

Q. What were you earning, Mr. Burnley, when Mr. Campbell first called to see you and made your acquaintance, as you say he did?

Mr. SIDDONS: Objected to as immaterial, and I feel obliged to say to the witness that he is not obliged to answer the question unless he wants to.

Mr. RIDOUT: Oh, if he is afraid to answer it, he need not do it.

Mr. SIDDONS: It is not a question of fear, Mr. Ridout.

Mr. RIDOUT: He has gone into some alleged interview which was the alleged ini-ation of this thing; now he ought to be willing to give the facts. I presume he is.

The WITNESS: I am perfectly willing.

Mr. RIDOUT: Then, Mr. Siddons is interfering in your affairs.

Mr. SIDDONS: Counsel for the complainant simply undertook to advise the witness as to what he conceived to be his rights, and not to interfere with the witness' affairs.

A. The month previous to Mr. Campbell's coming in there my commissions amounted to $140.

Q. What did they amount to as an average? A. Well, I should say about from $75 to $80.

Q. How long did you hesitate, you say, before you agreed to accept $75 flat and 10 per cent. commission on actual sales? A. Well, it was a day or two. I consulted Mr. Mills, and I was not going to leave him unless I had his consent, or at his advice, and he advised me to take it. He said the summer was coming on and the business would fall of- in encyclopædias.

Q. And you say that Mr. Campbell, who had never seen you before, on the occasion of his first interview with you offered you $75 a month and 10 per cent. commission? A. Most assuredly I do.

Q. And you accepted it? A. Not then.

Q. Well, you finally did? A. Yes, sir.

Q. And you went to work? A. Yes, sir.

Q. And then I understood you to say that you had difficulty in collecting the money from him? A. I didn't say I had difficulty in collecting the money from him. I said there was always
200 delay.

Q. Well, there was a delay? A. Yes. Sometimes it would be Saturday night and sometimes it would be Monday morning.

Q. It was paid with more frequency to you, wasn't it? A. It was supposed to be paid once a week.

Q. Well, it was paid at least that often, wasn't it? A. Yes, sir.

Q. How often, if at all, did you borrow money from Mr. Campbell? A. Only on one occasion.

Q. What was the security you offered on that occasion? A. I offered some pension vouchers.

Q. And what action did you afterwards take in reclaiming those pension vouchers?

Mr. SIDDONS: Just let me interpose an objection to this cross-examination as not being responsive and wholly irrelevant.

Mr. RIDOUT: Perfectly admissible to show the bias of this witness and to test his credibility.

A. I offered Mr. Campbell a note for the amount, to give me back the vouchers that I might collect the money quarterly, as it was due. He hesitated about—he refused to give them—give up the vouchers and I then wrote to him if he didn't do it, why I would report the fact to the pension commissioner; and, at the time I gave them, I didn't know that it was an unlawful act to loan money on those vouchers.

Q. You got the money, didn't you? A. Got the money?
Q. Yes? A. I got, let's see—I got $50 when he promised me $75.
Q. Have you ever paid it? A. No, I haven't paid it.
Q. You got the vouchers, didn't you? A. I did.
Q. That made you feel very kindly to Campbell, didn't it? A. He told me right in——
Q. Never mind; answer my question, yes or no. Then, that made you feel very friendly to Campbell? A. It is a matter of indifference perfectly.
Q. It was then, was it? A. It is now.
Q. It is now? A. Yes.
Q. You afterwards sought employment by Mr. Daniel? A. Sought employment by him?
Q. You were employed by Mr. Daniel later in 1903? A. Yes.
Q. You are still employed by him, are you not? A. I am to this extent——
Q. You have — answered my question sir.
The COMPLAINANT (T. Cushing Daniel, to the witness): Go on and answer it.
Mr. RIDOUT (to the complainant Daniel): Are you conducting this examination?
The complainant DANIEL: You seem to be trying to do it and I am——
Mr. RIDOUT: And you can't interfere. Your counsel will interfere if there is any need of it. Mr. Siddons can take care of you.
Mr. SIDDONS (to the complainant Daniel): I will take care of you; you need not interrupt.

By Mr. RIDOUT:

Q. Now Mr. Burnley, you wish us to understand that when
201 you made your answer to that question of Mr. Siddons which followed immediately after your statement that the failure of the sanitary improvement company was a blessing in disguise—did you understand that question to relate to your first interview with Mr. Campbell? A. My first interview with Mr. Campbell?
Q. You answered that Mr. Campbell spoke of building up the whole ten and a half acres. A. Yes.
Q. You afterwards admitted you were talking about some much earlier conversation. I say did you understand, when you were answering that question that way, that Mr. Siddons' question was addressed to that earlier period? A. I did not. He explained it afterwards.
Q. I say when you answered it, did you refer to the earlier period? A. Mr. Campbell, on both occasions, when I went in his employment he spoke of building up the whole piece of ground, and also after the sanitary dwellings company had fallen down and they had taken it up——
Q. The question I asked you was whether, when Mr. Siddons asked you the question, did you understand him to refer to your conversation which transpired a year earlier than the time when you were employed in Mr. Daniel's office? A. Mr. Siddons called my attention to it.

Q. Well, I asked you before he called your attention to it, what did you think you were answering—in reference to what period of time? A. Well, to the first interview.

Q. Well, it was a long time to get you to say it. A. You took a round about way to get it.

Q. Now, when did you first, after you signed this statement or certificate on the back of Exhibit 7, when next after that did you discuss the matter of that paper with Mr. Daniel? A. Oh, the matter was under discussion quite frequently after that. I don't remember the exact times.

Q. What did Mr. Daniel say to you about it? A. Why, he asked us to look over it, and asked me to look over it and to list the payments to the individuals; to analyze it in a certain way; to make, for instance, all payments to Cowell under one head, and all the payments to the other parties under another head.

Q. When is the last time you talked to him about it—to Mr. Daniel about it? A. About that statement?

Q. Yes, sir. A. Oh, I don't remember. Probably I don't recall when that statement has been called up except here to night.

Q. Well, I would like to know how long a time has elapsed between the last time you discussed it and this examination?

Mr. SIDDONS (to Ridout): Do you mean with Mr. Daniel.

Mr. RIDOUT: With Mr. Daniel.

A. I could not tell you if my life depended on it.

Q. How long a time has elapsed since you discussed it with anybody else—any person other than Mr. Daniel? A. To night.

Q. With whom did you then discuss it? A. The account was just mentioned. It was not discussed at all.

202 Q. What was the object of that gesture that Mr. Daniel made to you then? A. I didn't see any gesture.

Q. Then you can't tell what he meant by it? A. Most assuredly I can't.

Q. Well, you say you talked about it to night? A. When Mr. Siddons here, when he brought it up; just a moment ago. That is all I talked about it.

Q. You didn't talk about it to anybody for how long a time prior to this examination? A. Oh, I suppose it has been probably two or three weeks.

Q. And with whom did you then talk about it? A. I just mentioned it there in the office. Probably Mr. S. B. Daniel, or something of that kind.

Q. What did you say about it on that occasion? A. Oh, I don't remember.

Mr. SIDDONS: Of course, I am letting this go in. I could object to these various questions.

Mr. RIDOUT: It wouldn't do you any good to object. I have got a right to test this witness' memory.

Mr. SIDDONS: I know it wouldn't have any effect on you, but I want to get my objection in.

Mr. RIDOUT: It would not have any effect on the court either.

Mr. SIDDONS: Well, let's see. I object to all these inquiries as to the discussion of the account with Mr. Daniel.

Mr. RIDOUT: Counsel for the defendant states to the record that he is testing the credibility and recollection of this witness.

By Mr. RIDOUT:

Q. You were present during the testimony of Mr. Mitchell to night, were you not? A. I was.

Q. You heard it? A. I did.

Redirect examination.

By Mr. SIDDONS:

Q. There was a question that I neglected to ask you on the examination in chief, Mr. Burnley. Did Mr. Campbell ever accompany you in any effort that you were making with anybody to sell any of the stock of the sanitary dwellings company? A. He did.

Q. To whom? A. He took me to see a Miss Richards, a lecturer, that had been, I reckon, advertising the stock or advertising the proposition, and she gave us a list of names, and after that he went with me to see one of the parties, I forget her name, that he knew personally, and I sat out in the buggy while he went in to see this party.

Q. Mr. Burnley, you discussed this——

Mr. RIDOUT (to Mr. Siddons): What is this, Mr. Siddons?

Mr. SIDDONS: Re-direct.

Q. (Continuing:) You discussed, I think you said, this account—statement of account and your evidence relating to it with me this evening, didn't you, just before this testimony occurred? A.
203 It was just mentioned; not discussed anyway especially; that was all; just as you asked me—he asked me when it was the last time it was discussed, and you brought it here and showed it to me. That is all the discussion I have ever had about it. He wanted to get at the very last minute.

Recross-examination.

By Mr. RIDOUT:

Q. Mr. Burnley, what day was it when you say you went in the buggy with Mr. Campbell to call on some lady to try to sell her stock? A. It was just after commencing the sale of that stock.

Q. And what month was that? A. I believe it was in May.

Q. What year? A. 1902.

Q. Where did the lady live that you visited? A. She lived up there on Columbia Heights somewhere; I don't remember the location of the house.

Q. Well, can't you do any better than that about it? A. No, sir.

Q. Don't you know the street it was on? A. No, sir.

Q. Was it a street running North or South or East or West? A. I don't know whether it ran North or South or East or West. I paid no attention to it except to get the name of the parties.

Q. What was the name of the lady? A. Miss Richards.

Q. I say the lady on whom you called? A. I don't know the name, because he was going to see her. It was not on my list.

Q. That is all you can give about it? A. That is all I can say about it.

Q. Did you say you called on two people besides Miss Richards? A. The first call was with Mr. Campbell that day and was on Miss Richards or Richardson, a lecturer.

Q. Well, you have told us about that. Did you make two other calls? A. No, sir, I have only said one.

Q. And that you can give us no further information about than you have already given? A. That is all.

Q. Where was the other call made? A. Made down here below the Avenue, up on G or——

Q. Was it West of the White House or East of it? A. I don't remember where it was. It was down in that section of the city.

Q. Mr. Burnley, you can surely say whether it was West of Fifteenth street or not, can't you? A. West of Fifteenth street?

Q. Yes. A. Why, yes, it was West of Fifteenth and South of the Avenue. I can get that close to it.

By Mr. SIDDONS:

Q. Mr. Burnley, you said just now, in response to a question of Mr. Ridout's, that this lady that you subsequently called on, after the call on Miss Richards had been made, was not on your list. A. Yes, sir, that's right.

Q. What list did you refer to? A. That was a list of names that Miss Richards furnished Mr. Campbell, and he gave them to me for me to call on as probable purchasers of stock.

204 Q. And this lady that you called on South of the Avenue was not on that list? A. No. He took that party, as he knew her. He was to call on that party, and I just simply went along in the buggy.

Q. I say he was to call on her? A. Yes, sir.

Q. And you went along at his invitation? A. I just rode along in the buggy with him; that was all.

Q. Did he go in the house? A. He did.

Q. Did you go with him? A. I did not.

By Mr. RIDOUT:

Q. Have you that list Miss Richards gave you? A. No, I have not.

Q. What did you do with it? A. That was thrown away with the things that were no good.

——— ———.

Subscribed before me this day of 1905.

——— ———, *Examiner.*

At this point an adjournment was taken until further notice.

MONDAY, *May 8th*, 1905—3:45 o'clock p. m.

Met, pursuant to agreement.

Present: The Solicitors for the respective parties, the parties litigant and the Examiner.

Whereupon, GEORGE HOWARD, called as a witness on the part of the complainants in rebuttal, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. SIDDONS:

Q. Mr. Howard, will you state your residence and occupation, please? A. My residence is 1008 16th street.

Q. Your occupation, sir? A. My occupation is Treasurer of the National Safe Deposit Savings and Trust Company.

Q. Are you acquainted with Mr. T. Cushing Daniel, Mr. Howard? A. Yes.

Q. Did you, as treasurer of the company, ever have any dealings with him on or about June 16, 1902? A. Yes, and before that, in December, 1902.

Q. You mean subsequent? A. Subsequent I mean.

Q. Now, first with respect to the transactions—the dealings with him in June, 1902. Will you state what they were, and what was done by you and him? A. It was in regard to these notes of T. C. Daniel's which were secured on this property, and the notes were held then by us for Mrs. France's account, and there were certain differences as to the payments of the interest and principal between us—as to interest and principal, and we agreed then that the
205 total amount of the interest and principal would be the sum of $32,500.

Q. What date was that? A. That agreement was dated June 16, 1902. On that date, after the agreement of $32,500 was arrived at, $500 was paid on account of the principal, reducing the amount to $32,000.

Q. Now, with that statement, Mr. Howard, made, when did the next installment of interest on that indebtedness come due, sir?

Mr. RIDOUT: Objected to because that is a question of law.

A. Why, it was somewhere—it would be December 16, 1902 The next installment, I think, was paid on June 12, 1902.

Q. You don't mean June 12th? A. I mean December 12th, 1902.

Q. Was that a payment merely of interest, or was it a payment of interest that fell due on the 16th and a payment of principal? A. No, it was a payment of $2250, of which $936.66 went on account of interest and $1311.34 on account of principal, reducing the amount of the principal to $30,688.66.

Q. And that was actually paid to the company on December 12, 1902? A. 1902, yes.

Q. And between June 16th, 1902, and December 16th, 1902, there was no installment of interest due on the note? A. No, sir,

not as far as you could see. It was supposed to be somewhere from that date.

Mr. RIDOUT: Objected to for the same reason.

Q. Your dealings were with whom in that matter, Mr. Howard? A. With Mr. Daniel.

Q. Only? A. Yes, sir.

Cross-examination.

By Mr. RIDOUT:

Q. Is that agreement in writing? A. The substance of it; the memorandum of the agreement made on December 12th, 1902, but there was a subsequent memorandum agreement which was dated December 12th, 1902.

Q. But the arrangement of June 16th, 1902, was not put in writing? A. I have no memorandum of that effect. This is the paper on which the payments were made. Here is the original memorandum, Mr. Ridout, if you would like to see it.

Mr. RIDOUT: I would like to have that. (To Mr. Siddons.) Do you want to put that in?

Mr. SIDDONS: I offer these entries in evidence:

Date.	Installment.	a/c interest.	a/c principal.	Bal. due.
June 16, 1902, balance agreed upon				$32,500.
June 16, 1902	$500		$500	32,000.
December 12, 1902,	$2250	$930.66	$1,311.34	30,688.66
	2250*			

206 By Mr. RIDOUT:

Q. Mr. Howard, are the endorsements I show you written on the back of a paper dated December 12, 1902, the endorsements of payments on account of principal and interest to which you refer? A. Received from and including June 16th, 1902.

Redirect examination.

By Mr. SIDDONS:

Q. Mr. Howard, just one question in that transaction of June 16th, 1902, about which you have testified. For whom were you or the company acting? A. Mrs. France.

Q. Was she acquainted with the results of the transaction? A. Oh, yes.

Recross-examination.

By Mr. RIDOUT:

Q. Mr. Howard, there is one question I forgot to ask you. You have referred to certain original memoranda there written on yellow sheets of paper. A. Yes, sir.

[* In pencil in copy.]

Q. From those, or from memory, can you say what part of the agreed sum of $32,500 as of June 16th, 1902, represented interest and what principal? A. No, sir, I cannot. It just shows the total amount.

Q. Don't they figure out there for each note? A. It just shows the total amounts on the general memorandum.

Q. Let me look at that. I thought they segregated it. It gives an approximate value here. From an examination of these papers it appears that the principal at that date was $25,911.92. The difference, therefore, between that sum and $32,500 was interest, was it not? A. Yes. According to our opinion the interest ought to be more than that. That was the agreement we arrived at.

By Mr. SIDDONS:

Q. That is, as a result of counter claims made by Mr. Daniel, the amount was finally reduced by agreement of both parties to $32,500 principal and interest? A. That is correct.

Q. $500 was paid at that time? A. At that time.

Q. As a settlement, and the next installment of interest under that arrangement would be due on December 16th, 1902? A. Yes.

By Mr. RIDOUT: So far as that question is addressed to the maturity of the next installment of interest it is objected to, because that liability is fixed by the written instrument in the case and is beyond the control of the trust company, or the opinion of the witness.

—— ——.

Subscribed before me this — day of May, 1905.

—— ——, *Examiner.*

207 (At this point an adjournment was taken until Wednesday, May 10th, 1905, at 7:30 o'clock p. m.

MONDAY, *May 15th,* 1905—7:30 o'clock p. m.

Met, pursuant to notice, to resume the taking of testimony on the part of the complainant- in rebuttal.

Present: Frederick L. Siddons, Esq., Solicitor for the complainants; John Ridout, Esq., Solicitor for the defendant, the parties litigant and the Examiner.

(After waiting fifteen minutes for Mr. John Ridout, the Solicitor for the defendant, and he not appearing, and the witness George H. Lloyd stating that he could not remain longer, the session was thereupon opened.)

Thereupon GEORGE H. LLOYD, called as a witness on the part of the complainants in rebuttal, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. SIDDONS:

Q. You have given your name. Please state your residence and occupation. A. My residence is Elliston Terrace, D. C.

Q. What is your business, sir? A. My business is contractor.

Q. Have you ever built houses? A. Yes.

Q. How long have you been in the business? A. I have been in the business about fifteen years.

A. In *in* that time have you built many houses of different kinds. A. I have built a great many houses, yes, sir.

Q. Have you had occasion recently to examine some houses on the North side of Rhode Island Avenue between Fifth and Sixth streets—there are some two story apartment houses there? A. Yes, sir, I have.

Q. I would like to ask you, from your examination of those houses, and considering, Mr. Lloyd, that those houses were commenced—their construction was commenced in the latter part of December, 1902, and were completed in June, 1903, how much, in your best judgment, ought those houses to have cost as of that time? A. $3,050.

Q. Do you think that they could have been reproduced at that time for that amount of money? A. I do.

Q. Have you ever built houses of that character yourself? A. I have superintended houses of that character, and I have been architect on houses of that character.

——— ———.

Subscribed before me this — day of ———, 1905.

——— ———, *Examiner.*

208 Thereupon WILLIAM D. HOOVER, called as a witness on the part of the complainants in rebuttal, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. SIDDONS:

Q. Mr. Hoover, you are the same W. D. Hoover who was called and testified in this case in behalf of the defendant, Mr. Campbell? A. I am.

Q. I will ask you if you have read the testimony of Mr. George Howard, the treasurer of the National Safe Deposit Savings and Trust Company? A. Yes, I have read that.

Q. Now, in the light of Mr. Howard's testimony, I will ask you if there was any installment of interest due on what has been called the Franz trust or indebtedness between June 16th, 1902, and December 16th, 1902? A. No.

(At this point Mr. John Ridout and the defendant Campbell entered the room, and the preceding testimony of the witness Hoover was read by the Examiner.)

Mr. RIDOUT: Objected to because the question calls for a conclusion of law, which is not competent for the witness to answer.

By Mr. SIDDONS:

Q. I will ask you, Mr. Hoover, whether, in fact, so far as you know, or recall, whether between June 16th, 1902, and December

16th, 1902, the trust company, acting for Mrs. Franz, made any demand for the payment of any interest on that indebtedness? A. I don't recall any particular demand made during that period, Mr. Siddons.

Q. Did you make any such demand? A. Not that I recall.

Cross-examination.

By Mr. RIDOUT:

Q. Mr. Hoover, did you receive any letters from Mr. Daniel concerning this matter between June 16th, 1902, and December 16th, 1902—I mean your company? A. There may have been some, Mr. Ridout. I don't recall any particular one.

Q. When did you first learn from Mr. Daniel that he had arranged to procure a guarantee from Mr. Campbell?

Mr. SIDDONS: Well, I object to the question as not proper cross-examination.

Mr. RIDOUT: I will make him my witness.

Mr. SIDDONS: Well, then, I withdraw it. He makes him his witness.

A. That was some time anterior to the 2nd of December.

Q. 1902? A. 1902.

Q. Was the suggestion of that sort by Mr. Daniel in response to the demand for payments on account of the debt? A. As to
209 that I do not recall, Mr. Ridout. My recollection of the matter was that Daniel came and explained that he had made some arrangements for an extension of the loan and for getting other parties interested with him in the property, so far as I recollect.

Q. What was the effect of the execution by Mr. Campbell of that guarantee in securing an extension and indulgence from the company as representing Mrs. Franz? A. At the suggestion of Mrs. Franz the company prepared this extension or agreement, which I believe has been introduced in the case here.

Q. I have here what purports to be copies of letters dated June 16, 1902, and July 24, 1902——

Mr. SIDDONS: I understand you are examining him as your witness?

Mr. RIDOUT: Certainly; I am not afraid to examine him as my witness.

Q. (Continuing:) August 30th, 1902, and October 23, 1902, some *is the proper custodian of those letters? A. Those letters are* is the proper custod-an of those letters? A. Those letters are kept in the Franz estate in the trust department. In that way I would be the custodian of them.

Mr RIDOUT: Mr. Siddons, I would like to have Mr. Hoover produce the originals of those letters, in order that I may offer them in evidence. Do you require me to have a *subpœna duces tecum* issued for him at the proper time.

Mr. SIDDONS: Why, I don't care anything about the *subpœna*

duces tecum. If they are competent you are entitled to have them Of course, I reserve the right to object.

Mr. *Hoover* (to the witness): Mr. Hoover, I will give you a list of these letters and ask you to produce the originals in order that they may be introduced in the record.

Redirect examination.

By Mr. SIDDONS:

Q. Mr. Hoover, I just want to ask you one question. Mr. Ridout asked you something on cross-examination regarding the contract of guarantee, as he called it. Did the trust company demand that some third party be interested in this agreement as a guarantor, or was the proposal to introduce Mr. Campbell into the guarantee one made to the company by Mr. Daniel? A. My recollection is that that was proposed by Mr. Daniel, as far as I can recollect.

Recross-examination.

By Mr. RIDOUT:

Q. Was it not proposed by him in response to the demands for payment in settlement of this matter? A. As to that I don't recall, Mr. Ridout. I am inclined to think that Mr. Daniel had had several
conferences with Mrs. Franz about the matter at that time,
210 and this agreement was the result of, I presume, those conferences, and certainly what Mr. Daniel told us as the result of them.

——— ———.

Subscribed before me this — day of ———, 1905.

——— ———, *Examiner.*

Thereupon SYLVESTER C. COWELL, called as a witness on the part of the complainants in rebuttal, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. SIDDONS:

Q. Mr. Cowell, what is your business? A. Brick contractor.

Q. Are you associated with any one in that business, sir? A. With my father.

Q. Where is your father now? A. He is in Maryland.

Q. What is the condition of his health? A. He is very poorly.

Q. Do you know Mr. Charles M. Campbell? A. Yes, sir.

Q. Mr. T. Cushing Daniel? A. Yes, sir.

Q. Were you ever employed by Mr. Campbell on any job of his own? A. Yes, sir.

Q. What job?

Mr. RIDOUT: Objected to as immaterial to this controversy.

A. On eleven houses.

Q. Whereabouts, sir? A. Six on Harvard street and five on Columbia Road.

Q. When did you go to work under that contract with Mr. Campbell on those houses? Do you remember about when? A. I can't recall the date.

Q. Do you remember in what year? A. 1901.

Q. And when did you finish your work—the same year or in a subsequent year? A. Well, we can say they were finished up, with a little cleaning down, in the same year. Of course, we went back in the next year two or three days' time in the odds and ends.

Q. Now, were you afterwards employed by Mr. Campbell to do any part of the work on a row of houses on the North side of Rhode Island Avenue between 5th and 6th streets, in Eckington? A. Yes, sir.

Q. And when you were so employed, do you recall? A. Well, I have not got dates; I ain't much on dates, but it was right after we had finished up his own work on the hill.

Q. Now, while you were working on this hill job did Mr. Campbell ever discuss with you or talk with you about the building of those houses on Rhode Island Avenue, in Eckington? A. Yes, sir.

Q. What did he say to you with respect to building on that property? A. Well, he told me that he wanted me to give him a bid on five houses in Eckington, and at the time he told me he wanted me to give him the bid he didn't say who it was for, but of course I found it out afterwards. I had another conversation, North-
211 west or Northeast, I don't know which it is, Eckington Improvement Company, for five houses, and I was to build those five, and afterwards build five more. He didn't say how many. Of course, he was going to finish five at the time. Didn't state how many he was going to build.

Q. Then, you made a bid on those five houses, did you? A. Yes, sir.

Q. And what did your bid cover, what part of the work? A. Just the brickwork.

Q. Did he tell you whether he was going to build five or ten, or more, houses out there?

Mr. RIDOUT: Objected to as cross-examination. The witness has already stated fully what he knew about that.

A. He was to build five and then, as I understood him, he was to build five more, and then, as I understood him, still further he was to build on the other end; and the way I understood him he was to build a good number of houses. That is the way I understood him.

Q. When did you first meet Mr. Daniel and Mr. Redman in connection with this job? A. Well, we had gotten started on the first five houses and under way before I ever saw Mr. Daniel at all. I can't recollect just when, but while we were—but we had started

the houses before I met Mr. Daniel, and then I didn't meet Mr. Redman until I met him at Mr. Daniel's office here last winter.

Q. Now, Mr. Cowell, how was your account paid by Mr. Campbell—I mean your account for this Eckington job—the five houses—how was it paid—paid regularly, or how, or not, and is it yet all paid? A. No, sir. It came rather slow. In fact, we was not up on the first row when we started on the second. In fact, it is not paid up to day.

Q. That is the row of houses, the second row, you mean, the row on the South side of Rhode Island Avenue? A. The first row was not paid up when we went on the second row.

Q. Did Mr. Campbell make you any payment on account of this Eckington job—Northwest Eckington Improvement Company job, this year, 1905? A. Well, I got—I will tell you how this was. There was a dispute of $450 which I got from Mr. Campbell while we were—in fact, we had finished up in Eckington and I got $450. He didn't tell me where the credit came from, either one way or the other, so I taken and credited the $450 on the old hill account.

Q. You mean on his individual account? A. On his individual account.

Q. Well, now——

Mr. RIDOUT: Let him finish, now.

Mr. SIDDONS: Well, he has finished.

Mr. RIDOUT: No, he has not.

By Mr. SIDDONS:

Q. Had you finished, Mr. Cowell or not? A. Yes, sir.

Q. Did Mr. Campbell make any payment to you on account of this Eckington job in February of this year? A.
212 February 8th, if I am not mistaken.

Q. I wish you would tell the circumstances of that payment—what Mr. Campbell said to you, and whether or not you gave him any receipt, and so on? A. Well, we had placed Mr. Campbell's bill account in the hands of Mr. Prentice, a lawyer, to settle, and the case came up and on that day my father and myself went down to court, and we talked it over, and we compromised, and I was to get—I don't remember—I think he was to settle up the whole account provided I changed that account of $450 which he gave me, that is, February 8th, and I gave him credit for the $450 on the Northwest Eckington Improvement.

Q. What do you mean, "changed the account?" A. Well, that is the way he put it to me. He said, "If you change the account."

Q. Did you give him any receipt? A. No, sir, I didn't give him a receipt. I sat down and addressed him a letter, and also have a copy of it. He wanted me to give him a receipt but I would not do it.

Q. Why wouldn't you—what did he say to you when he asked you to give him a receipt? A. Well, he wanted the receipt dated back.

Q. Dated back to what period? A. When he claimed he gave me $450.

Q. What explanation did he make, if any, of wanting you to date back that receipt? A. It was some dispute between him and the other two parties interested in this building, and that this $450 would help out on his accounts.

Q. And then you didn't give him a receipt but you wrote a letter? A. Yes, sir, wrote him a letter; addressed him a letter.

Q. Now, Mr. Cowell, you saw a good deal of Mr. Campbell, did you not, during the progress of the Eckington job? A. Well, he came over two and three times a week.

Q. Did you ever talk with him at all about the building operations—this building operation? A. Well, we said a few words about the building as it was going on; different things.

Q. Was Mr. Campbell, in your opinion, a skillful builder himself?

Mr. RIDOUT: I object. The witness has not shown any capacity as an expert. I object.

A. Well, I will tell you. I don't think he was, because he admitted himself that he could not figure brick work.

Q. Mr. Cowell, were any notes given to you by Mr. Campbell to close, or in settlement of this Eckington job during the operation? A. Yes, sir, there was notes given by the three I think.

Q. Mr. Campbell, Mr. Daniel and Mr. Redman? A. Yes, sir.

Q. Were any of those notes protested for non-payment, do you know? A. Yes, sir.

Q. Mr. Cowell, did you ever call on Mr. Campbell with respect to a settlement of any of the balance that was due you—due
213 your firm for this Eckington job, about January, 1904—January a year ago? A. Yes, sir.

Q. Perhaps I ought to ask you this question: Did you know anything of what was known as the Malnati sale of ground out there on this same property—did you know of any ground that had been sold by this company to a man named Malnati? A. Yes, sir.

Q. Now, did you have any talk with Mr. Campbell regarding the payment of your account—well, you said you did in January. Did he answer that question?

Mr. RIDOUT: Yes, he said he did.

By Mr. SIDDONS:

Q. I wish you would state what Mr. Campbell said to you when you asked him for this balance, or settlement of your balance in January a year ago, whenever it was? A. Well, I said if there was not a settlement made I was going to sue. He said go ahead and sue, the property is good for the money.

Q. Were the transactions that you had with Mr. Campbell on this Eckington job satisfactory, Mr. Cowell?

Mr. RIDOUT: I object. It is immaterial whether they were or not.

A. No, sir; they was not satisfactory.

Q. I believe you stated, did you not, that there is still a balance due your firm on account of this job? A. Yes, sir, there is.

Q. Mr. Cowell, how long have you been in the business—your business? A. Well, this is going on the 6th year.

Q. The sixth year? A. Yes, sir. Of course, I was not in business six years——

Q. You were not a partner? A. Yes, I was a partner for going on six years. When I started my trade my father had two apprentices at the time, and they didn't allow any more than two, so he had to take me a partner in order to get me at the trade; so I have been a partner for six years.

Q. Have you done much brickwork on houses in that period? A. Yes, sir, I have.

Q. How long were you connected with the building of these two rows of houses, the North row of houses—how long were you working on then, the North row, approximately, from the time you commenced, can you tell? A. I can't tell that now.

Q. Let me ask you this: In what stage of the building operations did your work cease, or did it cease? A. On the north row?

Q. Yes. I mean on the North row. A. The satisfaction was reasonable in price——

Q. No, you don't understand me. At what stage of the building operations on the North row did your work stop out there? A. It stopped in the busy season.

Q. No. At what stage of construction had the buildings reached when you quit work on that North row? A. They were under roof.

Q. Now, are you familiar with any other parts of the work
214 of building houses than that of brick? A. I can't say that I am. Of course, I have figured on them, and I have done small jobs, but I have never undertaken the work.

Q. Are you able to say, Mr. Cowell, bearing in mind when those houses were constructed, this North row I am speaking of—when they were constructed in December, 1902, and ending about June, 1903, bearing in mind the time and the price of material and the price of labor at that time, what those houses ought to have cost?

Mr. RIDOUT: Objected to, as this witness has shown his utter incompetency to answer any such question.

A. I would not like to undertake to say.

Q. You would not like to undertake to say? A. No, sir.

Cross-examination.

By Mr. RIDOUT:

Q. Mr. Cowell, was that $450 payment made in one or several payments? A. In two or three.

Q. By check or in cash? A. By check.

Q. And how many of those checks were handed to you? A. I think I got every one of them.

Q. You are positive of that, are you? A. No, I am not positive.

Q. Didn't your father get most of them? A. No, sir, I think I got them. I am not positive.

Q. And you are positive that Mr. Campbell made no statement when he handed any one of those checks to you that it was to be credited on the Eckington work? A. I am positive.

Q. Now, coming down to the settlement or conversation that was had at the court house. Isn't it a fact that Mr. Campbell then stated that that payment of $450 was intended originally for the Eckington houses—didn't he contend that? A. Well, I can't say he did.

Q. If he didn't claim that the money was originally paid on the Eckington houses, upon what ground did he insist that the credit should then be given? A. Well, it seems that he wanted me to give him that credit because he had had some dispute with the other two parties. I didn't understand that part of it at all.

Q. Did you read the papers in that case—I think I saw you doing it—did you read them—Mr. Campbell's affidavit?

Mr. SIDDONS (to Mr. Ridout): What case are you talking about?

Mr. RIDOUT: He testified all about it on his direct examination. The case which was compromised. Mr. Campbell filed in the case an affidavit about a year before the case was tried.

By Mr. RIDOUT:

Q. Did you read that affidavit in the case between you and Campbell? A. I think I did, yes, sir.

Q. You think you did read it. A. I think so.

Q. Don't you remember that in that affidavit he swore that
215 he originally paid that money on account of the Eckington houses? A. Yes, but he didn't.

Q. How can you say, then, that in the discussion about it he didn't claim that he originally paid it on those houses? A. He didn't say that he didn't want it paid either way.

Q. You say that you remember a year before that suit, you say that he intended it should be paid that way? A. That is where the whole thing stopped. There would not have been any lawsuit if he had——

Q. I say you insisted that you had to receipt and credit them on the hill houses? A. Because he didn't state which way he wanted it——

Q. Just answer my question. Mr. Siddons will take care of you and ask you anything further. The question I asked you was whether his contention was not that it ought to have been originally credited on the Eckington, and your contention that it should have been originally credited, just as you did credit it, on the hill houses? A. Yes, sir.

Q. Now, didn't you finally, by way of adjustment of the whole matter, agree that the credit which was given by you on the hill houses should be cancelled, and the credit should be given on the Eckington houses? A. No, sir, I did not.

Q. You didn't agree to revise your settlement—you mean to say that there was not a change made by which the credits on the hill

houses were reduced by $450, and the credits on the Eckington houses were not increased about $450? A. No, sir.

Q. You say that was not done? A. No, sir.

Q. You stick to it, now, do you, that you did not diminish the hill credits by about $450, or very nearly that, and agree to apply it as if it had been paid on the Eckington houses—you say you didn't do that? A. If you will let me explain—I said that I gave the Northwest Eckington Improvement Company the credit for the $450 provided Mr. Campbell gave me that $450 plus what was the balance due me on the hill. That is the way I settled it.

Q. Then, you did, as an outcome of the whole thing—— A. (Interposing.) I credited him February 8th, 1904.

Q. But, as a matter of fact, you did do precisely what I asked you a while ago. You increased the credits on one job and diminished them on the other? A. Yes, in one sense of the word, I did. I gave the Northwest Eckington Improvement Company credit for $450 when I got it. That was February 8th, 1904. That is the credit that Mr. Campbell wanted credited there a year back or so.

Q. Mr. Campbell had a year prior paid somebody $450? A. He wanted me to give credit to the Northwest Eckington Improvement Company that I had already credited to him on the hill.

Q. And he wanted you to credit it back to the date when it was originally paid, didn't he? A. Yes, sir.

Q. And he stated in your presence and in your father's presence and in my presence and in Prentice's presence because he did so was because it was originally intended to be credited on those houses? A. He said that, but—well, that's right.

216 Q. And in that settlement which you finally made you finally ended your claim against Campbell on the hill houses, didn't you? A. Yes.

Q. And you made a deduction of nearly $400, didn't you? A. Three hundred and some odd dollars.

Q. Nearly four hundred? A. Yes, sir.

Q. You are engaged in doing some work or making some plans for Mr. Daniel now, are you not? A. No, sir.

Q. Well, you have recently done it, haven't you, for some warehouses? A. I can't recall the date. It has been some time ago.

Q. Well, you had a conversation with Mr. Daniel in which he promised you some work in connection with some warehouses on this very ground out there, didn't he? A. No, sir.

Q. Well, he asked you to give him some estimates on account of some warehouses out there, didn't he? A. Yes, sir.

Redirect examination.

By Mr. SIDDONS:

Q. Mr. Cowell, when did Mr. Campbell first seek to have you change the credit of this $450 from the hill job to the Eckington Improvement Company job, can you tell? A. I can't recall the date, but it was at the time that Mr. Daniel asked for a statement.

Q. What did Mr. Campbell say to you when he asked you that? A. He told me, after I had sent in a statement to Mr. Daniel, that if

I would change that account to suit him he would pay for the hill account in full.

Q. Now, can you tell approximately when that was, Mr. Cowell? A. I can't recall the date.

Q. Was it less or more than a year ago? A. I would not like to say. It has not been more than a year.

Q. Just state what Mr. Campbell said to you when he asked you to make this change?

Mr. RIDOUT (to the witness): State it all.

A. After I had sent in a statement—had it made out and sent it in to Mr. Daniel, Mr. Campbell wanted a statement. Well, he had one similar to the one that Mr. Daniel had, but he wanted it changed. He had this $450 tangled up in there somewhere. He wanted his $450 credited to the Northwest Eckington Improvement Company, and let him owe that $450 on his own account, and he said he would settle up his whole account in full if I would change this account that way, which I did change it for him, and then he refused to pay me, and then I ignored the statement.

Q. Had you sent in any account or bill to Mr. Campbell on the hill job prior to this occasion when he first asked you to make the change? A. Yes, sir.

Q. Well, did that statement of account, if you know, show any credit that you had given him on his hill job? A. I am not positive, but I think that, at the time I gave him the hill account, the $450 was on the hill account credit.

Q. It was on the hill account credit at that time? A. Yes, sir.

217 Q. Now, when was that statement made to Mr. Campbell? A. Well, I can't——

Q. Was it after you had given the statement to Mr. Daniel or b-fore? A. Before.

Q. Now, Mr. Cowell, did Mr. Campbell ever speak to you again about changing this credit from the hill job to the Eckington job? A. We had discussions several times. The same thing.

Q. And what did you say? A. That I refused to change it, and he insisted upon me—he said I would have to change it.

Q. Then you brought your suit against him for the balance due on this hill account? A. Yes, sir.

Q. And that was, if I understand your answer to Mr. Ridout—that was compromised at the Court house this last February? A. Yes, sir.

Q. And at that time, did Mr. Campbell renew his offer to get you to change that credit? A. Yes, sir.

Q. And then there was a settlement effected whereby you cut down your claim how much—your claim against Mr. Campbell how much? A. I can't remember how much. There was $521.00 due us and we took three hundred and some odd dollars, and then he gave me this $450 on that, which I gave credit to the Northwest Eckington Improvement Company.

Q. Mr. Cowell, prior to the settlement of this case in February

last, did you ever give Mr. Campbell a statement, as far as you know, which showed a credit of this $450 to this hill job? A. Yes, sir.

Mr. RIDOUT: You have asked him that at least twice, Mr. Siddons.

Q. And how did you come to give him such a statement showing this credit on the hill job—I don't mean on the hill job, I mean on the Eckington job, of course. Did you ever give Mr. Campbell a statement of his account, or the account against the Eckington job, which showed this credit of $450? A. Yes, sir, I gave him that statement, but it was understood this way: that he would settle for the hill account in full.

Q. And what did he say to you when he got that statement from you? A. He refused to settle with me.

Q. No, I mean when you furnished him with the statement. How did you come to furnish him with the statement of the Eckington job with this credit of $450? A. He said that there was $450 which he ought to have been credited with on the Northwest Eckington Improvement Company, which was not there, and we credited it on the hill, and he says that you go down and make out a statement showing this credit for $450 on the Eckington Improvement Company and I will give you a check for your money, for the balance due you on the hill job. Well, I gave him this account, and after I gave it to him he would not settle for the hill account. So then I told him that I would ignore that statement. He told me he would do that and he didn't do it.

218 Recross-examination.

By Mr. RIDOUT:

Q. In that suit that you brought Mr. Campbell set up a great many cross claims for deficiencies in the work and omissions in the work, didn't he? A. How is that?

Q. In this suit that you brought, Mr. Campbell swore to a great many charges for deficiencies in the work and omissions in the work and overcharges, didn't he?

Mr. SIDDONS: I object to the question as not proper cross-examination, and immaterial and irrelevant as calling for the contents of papers that Mr. Campbell swore to; statements that he made himself.

Mr. RIDOUT: The witness has undertaken to give his version of the compromise, and has given a most garbled and partial one, and I propose to let him give it all.

Mr. SIDDONS: Counsel for the complainants renews his objection, that the so-called garbled account of a compromise was in response to questions—incompetent questions and irrelevant questions put by counsel for the defendant on alleged cross-examination.

(The pending question was read to the witness by the Examiner.)

A. Well, you will have to make that a little more plain to me.

Q. Didn't he claim that, instead of owing you the money that you said he did, that he owed you a great deal less, because you had not fulfilled your contract in many instances—did he put up that defense? A. He did.

Q. Did not you, in this compromise, when you allowed that credit, was not that as a part of something he claimed as to the dispute between you? A. No, sir. We gave up what we did in order to keep my daddy out of court. Had it been me there alone we never would have given it up.

Q. Now, when was it that you gave that statement in which you gave credit for this payment of $450 on the Eckington work—when did you give that statement in which you gave credit for this $450 on the Eckington work—the original statement which showed that—when did you give that? A. I can't recollect the date. Mr. Campbell sent for me. He wished to have it changed.

Q. I didn't ask you that. I asked you when you gave it? A. I can't recall it.

Q. That answers the question. How near can you come to recalling? A. I can't say.

Q. Were all the transactions in this matter between you and Campbell, or did your father take part in any of them? A. My father took part.

Q. So you don't know what transpired between him and Campbell, do you? A. Yes; I know some of them.

Q. Well, there were some that you don't know anything about? A. I don't think there was any between Mr. Campbell and my daddy that I didn't know pretty well what was going on.

Q. Well, you knew what your father told you, of course? A. I think he told me the particulars of all of them.

219 Q. Yes, but, unfortunately, you will have to bring your daddy here if you want that in the case. You are only undertaking to tell now what you know personally, what you said to Campbell and what he said to you, and I say does that include all the conversation between you and Campbell and Daniel that has any relation to this Eckington work? A. No, I don't think it does.

Q. Do you remember ever signing any check stubs when you received money from Mr. Campbell? A. Yes, sir; I signed some stubs.

Q. And you signed stubs which stated that the work——

Mr. SIDDONS: Well, I——

Mr. RIDOUT: I am cross-examining this witness.

Mr. SIDDONS: I don't care if you are. I am going to object when you put an improper question.

Mr. RIDOUT: Well, go ahead then.

Mr. SIDDONS: Well, then, don't interrupt me. I object to the counsel assuming that there were statements, and assuming to quote from statements of stubs; the stubs themselves must be produced.

By Mr. RIDOUT:

Q. You have signed stubs, did you not, for checks on which stubs was written the fact that they were for the Northwest Eckington work? A. No, I don't say I signed all the stubs, no, sir.

Q. Well, did you sign any, was my question? A. Yes, sir; I signed some of them.

Q. How many? A. I can't say how many.

Q. You credited those checks on the hill property, didn't you?

The WITNESS: I would like to say something.

Mr. RIDOUT (to the witness): Mr. Siddons will give you a chance to say all you want——

The WITNESS: In regards to this one thing——

Mr. RIDOUT: Mr. Siddons will give you a chance, and you will have time, if you will just answer my question.

Q. You signed two checks, did you not, which said that they were for Northwest Eckington, and then you credited those on the hill property, isn't that so? A. No, sir.

Mr. SIDDONS: I object.

The WITNESS: I didn't sign any stubs with any such thing on them.

By Mr. SIDDONS:

Q. Such stubs as you signed, Mr. Cowell, who prepared them—who wrote what was on them? A. Mr. Campbell.

Q. And when you got a check from him he would, in some cases, ask you to sign—— A. (Interposing.) A stub.

Q. A stub? A. Yes, sir.

Q. Did you ever sign any stubs in blank? A. Yes, sir. How do you mean, with——

Q. I mean with nothing on? A. No, sir.

Q. Where were these stubs signed? Whereabouts were you
220 when you signed the stubs? A. In Mr. Campbell's house. I would like to say one thing——

Mr. RIDOUT (to the witness): Let Mr. Siddons ask you a question. You can't talk here without being asked a question.

By Mr. SIDDONS:

Q. You said you wanted to make a statement, Mr. Cowell.

The WITNESS: Mr. Siddons, why I was up to Mr. Campbell's house once and after he had been after me sometime to change his account, he showed me stubs where I had signed—charged to this Eckington account, which I told him at the time I didn't think was on there; I thought was put on there afterwards, and I think that is what he was referring to.

By Mr. RIDOUT:

Q. Will you swear that they were not on there when you signed them. A. I could not swear to it, but I say——

Q. You are on oath here now, sir. You make that statement, do you—are you willing to swear to it? A. I could not swear to it but it looked that way, what was on one. He asked me to change the account there.

Q. Because you had violated his request to put them a certain way? A. I put them just where they belonged. He never told me to put them either way.

By Mr. SIDDONS:

Q. Did you ever sign any stubs after you had received the checks? A. And used them, do you mean?

Q. Yes? A. No, sir.

Q. You signed them generally when you got the checks? A. Yes, sir.

By Mr. RIDOUT:

Q. Did you ever get a check without signing a stub for it? A. I think I did, yes, sir.

Q. What was it for? A. I can't say.

Q. When? A. During the time of our doing business with him.

Q. Well, you can't give it—was it $100? A. I can't say, but I have something that will show——

Q. You can't give it? A. I don't recollect when it was, and I don't recollect signing every stub that I got a check for.

Q. You say you have got something that will show all the checks that you ever got from Campbell? A. Yes, sir, every check that we——

Mr. RIDOUT: Well, I would like you to produce it. Mr. Siddons, I will ask this witness, as a part of his cross-examination, to produce a list he says he has of all the checks that Mr. Campbell ever gave him.

Mr. SIDDONS: As I haven't asked the witness anything about any such checks, if counsel wants such information from the wit-
221 ness he must make him his own and get it in the regular way, and not as a part of the cross-examination.

Mr. RIDOUT: That is all.

Mr. SIDDONS: That is all, Mr. Crowell.

Note by the Examiner.—After the foregoing witness had left the room, the following remarks took place:

Mr. RIDOUT (to the witness Cowell): Come back here, sir. There is a question I forgot to ask him on cross-examination.

The witness COWELL: I thought you had finished with me.

Mr. RIDOUT: You have been summoned here as a witness, and you will have to stay until you are discharged.

Mr. SIDDONS: Now, counsel closed the cross-examination of the witness, and he left the room and now recalls him.

Whereupon, the witness SYLVESTER C. COWELL, resumed the stand and was further interrogated.

By Mr. RIDOUT:

Q. Mr. Cowell, will you please tell me a little more definitely just how far you went in preparing plans for warehouses for Mr. Daniel to be erected on Northwest Eckington? A. Why, I think that is unnecessary.

Q. Yes, but you are not the judge. A. Well, I drew a set of plans.

Q. When? A. Sometime last winter. I can't recall the date.

Q. What did you do with them? A. I have them home.

Q. And what did Mr. Daniel say to you when he asked you to draw them? A. He asked me if I would draw them for him; that I had been taking lessons in architectural drawing, and asked me if I would draw him a set of plans for the warehouses, and I told him I would.

Q. Now, in that connection did he say anything about his intention to call you as a witness? A. No, I don't think so; no, sir.

Q. How long afterwards, or had he said it before? A. No, he never asked me as a witness before that.

Q. How long after? A. Well, it has not been so long ago. I can't recollect the date. In fact, I never knew I was going to be a witness.

Q. When he asked you to prepare those plans did he give you any intimation that he was going to employ you to do the brick work, or any part of the brick work out there? A. No, sir; he said he would give me a chance to bid on it.

Mr. SIDDONS: I object to those questions and answers as not being proper cross-examination, totally irrelevant and immaterial.

—— ——.

Subscribed before me this — day of ——, 1905.

—— ——, *Examiner.*

222 Thereupon, CALEB D. BURNLEY, having been heretofore duly sworn, was recalled and further interrogated.

Direct examination.

By Mr. SIDDONS:

Q. Mr. Burnley, how was that loan of fifty dollars or fifty five dollars which you obtained from Mr. Campbell paid to you—was it paid in a lump sum, or was it paid in several payments? A. Paid in three payments, I think.

Q. Three payments? A. Yes, sir.

Q. I believe you have seen Complainants' Exhibit No. 7, which is Mr. Campbell's account that he has furnished Mr. Daniel and Mr. Redman, in which appear, in the early part of it, under various dates, May 7th is the first one, C. D. Burnley, and then that goes on down through—I think down through September, 1902. I wish you would state, please, if any of these amounts appearing on this Exhibit No. 7—Complainants' Exhibit No. 7—opposite your name represent the amounts that he advanced to you, making up the fifty dollars or fifty-five dollars, which ever it was, and if so point out the dates and the items? (Handing witness Complainants' Exhibit 7.) A. (After examining same.) On September 21 was $25; on September 15th there was $15, and on the 13th there was $15.

Q. The 13th of what? A. September 13th.

Q. How much? A. $15. Those were the three, as I remembered it borrowed money, making $55.

Q. So that, this loan that Mr. Campbell made to you he charged

in to the account against the Sanitary Dwellings Company, or the Northwest Eckington Improvement Company, to Mr. Daniel and to Mr. Redman? A. Yes, sir.

Q. I think you have already testified, have you not,—did you testify as to when you first saw that account—when did you first see that account? A. I testified here the other night.

Q. You testified when you first saw that account? A. Yes.

Q. Why is it that the loan was not repaid by you to Mr. Campbell Mr. Burnley? A. When I got my vouchers back I offered to give Mr. Campbell a note for the amount of $50. He asked me to sign a paper, or a receipt saying that it would not make any difference at all; that that would settle the account. And I remember saying to him, I said at the time, "I owe that money to somebody."

Q. Mr. Burnley, when you saw this statement of account and this loan that Mr. Campbell had made to you charged against the Northwest Eckington Improvement Company, whom did you consider that money was due to?

Mr. RIDOUT: Objected to as a manifest attempt to get the witness out of an embarrassing position.

A. I considered it was due Mr. Campbell, in the first place, because I borrowed that money from him, but when he put it to the Northwest Eckington Company then I thought I must hold the
223 Northwest Eckington myself—hold somebody for the money. But it was paid to Mr. Campbell when he charged it to the Northwest Eckington.

Q. Deducting those three items from all other payments made, or money paid by Mr. Campbell to you, did you receive from him all that he agreed to pay you under his contract of employment—his employment of you to sell the stock of the Sanitary Dwellings Company?

Mr. RIDOUT: I object to that as immaterial.

A. Why, the account will show that I did not include the $50 or $55. I received only $191 and some cents, as well as I remember, but the account will show it. It can be added up, and I should have received $337.50 according to the contract.

Cross-examination.

By Mr. RIDOUT:

Q. Have you paid the Northwest Eckington Company that fifty dollars? A. I have not.

Q. Have you paid the Northwest Eckington Company the fifty dollars? A. I have not.

Q. When you obtained your first loan, as you call it, from Campbell, did you take to him a note from Mr. Daniel requesting him to make you that loan? A. I don't remember.

Q. Are you sure about that now? A. I say I don't remember.

Q. Will you say that you did not? A. I would not say that I did or did not.

Q. Didn't you take him a pencil written note? A. I say I don't remember whether I did or did not.

Q. Now, what was the form of receipt that you say Mr. Campbell demanded of you as a condition of accepting your note? A. Now, I don't even recall that. I know that I had written out a form of receipt and he objected to it, and then he wrote out another and I said, "Well, I don't propose—this is a matter that is immaterial, so I will sign this one," and he has got that receipt, and he can show it right here exactly what it was.

Q. You say you signed a receipt, did you? A. Oh, yes, I signed it.

Q. Stating that you had received the money? A. As well as I remember, that's right. I had his check to show it.

Q. I know, there is no difference about your having received it; the difficulty is about getting it back. Mr. Campbell refused to receipt your note, didn't he? A. Refused to receipt my note?

Q. Yes. A. Yes. I said so. I made that statement.

—— ——.

Subscribed before me this — day of ——, 1905.

—— ——, *Examiner.*

(At this point an adjournment was taken until Friday, May 19th, 1905, at 7:30 o'clock p. m.)

224 WEDNESDAY, *May* 31, 1905—7:30 o'clock p. m.

Met, pursuant to notice to resume the taking of testimony in rebuttal on the part of the complainants.

Present, on behalf of the complainants, Frederick L. Siddons, Esq.

On behalf of the defendant, John Ridout, Esq., the parties litigant and the Examiner.

Whereupon WILLIAM D. HOOVER, having been heretofore duly sworn, was recalled and further interrogated.

By Mr. RIDOUT:

Q. Mr. Hoover, have you brought with you the copies of letters which were requested to be furnished by you when you were testifying for the defendant in this case? A. Were they the letters that you requested at the last examination?

Q. No. My question is addressed to the copies that you were to bring. A. I have the original letter book in which those letters were copied.

Q. That refers to all the letters, does it? A. Yes, with the exception of these that you asked for at the last examination, which I attempted to get.

Q. Are those marked? A. Yes, I have them marked here in the book.

Q. June 16th, 1902, a letter addressed to Mr. Thomas R. Jones, signed by T. Cushing Daniel. A. Those are the letters you asked for the last time I was here, Mr. Ridout.

Q. Where are they? A. I have those originals.
Q. You have those originals addressed to Mr. Jones? A. Yes, sir.
Q. Now, have you the original letter of June 16, 1902, from Jones to Daniel? A. Yes, sir.
Q. July 24, 1902, to Jones from Daniel? A. Yes, sir.
Q. July 24 again to Jones? A. Yes, sir.
Q. And two letters written in the same enclosure apparently August 30, 1902 to you? A. Yes, sir.
Q. October 23, 1902, to Mr. Jones signed by Mrs. Franz? A. Yes, sir.

Mr. RIDOUT: Now, Mr. Siddons, what I want to do, in economy of time, is to let Mr. Hoover read those letters to the Examiner.
Mr. SIDDONS: Well, now, hadn't we better begin—the first letters you called for we were not able to produce them. Mr. Daniel lost or destroyed them all.
Mr. RIDOUT: Well, I am not at all strenuous about that.

By Mr. RIDOUT:

Q. Now, Mr. Hoover, you have got them marked in the letter book, have you? A. Yes, sir.
Q. Just begin with the earliest. A. The ones that you wanted were the ones I had written I understand?

Mr. RIDOUT: Yes, to Mr. Daniel.
225 Mr. SIDDONS: I object to the letter of April 22, 1902, as irrelevant, immaterial and incompetent to the issues in these proceedings; besides, the letter plainly deals with a situation of affairs that had been arranged by the agreement with the Trust Company of June 16, 1902.
The letter is as follows:

"APRIL 22, 1902.

T. Cushing Daniel, Esq., City.

DEAR SIR: In reply to your request for information as to the amount of principal and interest due on the notes secured on the Northwest Eckington property, we hand you herewith a statement made up to April 28th. We have talked with Mrs. Franz and find that she is not willing to make any reduction in the amount due. We hope your efforts to secure a new loan may be entirely successful.

Yours truly, WILLIAM D. HOOVER,
Trust Officer."

Mr. SIDDONS: The next letter dated May 15, 1902, is objected to as plainly incompetent and immaterial, it purporting to be a letter signed by the company to Mrs. Franz, who is not a party to this proceeding. It has not been shown that any of the complainants were cognizant of the existence or the sending of such a letter
The letter is as follows:

"MAY 15, 1902.

Mrs. Elenora T. Franz, Brightwood, D. C.

DEAR MADAM: In reply to your letter to Mr. Jones in reference to the West Eckington property, we write to say that Mr. Daniel has

arranged to call on next Monday at 10 o'clock to make some definite arrangements as to the property. We will let you know the result of the interview, and suggest the best course to pursue in the matter.

Yours very truly, WILLIAM D. HOOVER,
Trust Officer."

Mr. SIDDONS: The next letter of May 21, 1902, is objected to for the same reasons urged to the immediately preceding letter.

The letter is as follows:

"MAY 21, 1902.

MY DEAR MRS. FRANZ: Mr. Daniel called here on last Monday, and after comparing the credits on the notes secured on the West Eckington Property with those in his memorandum book or ledger, stated that he would be able to inform us within a few days about his arrangements for a new loan. I will advise you as soon as any further information is received.

Yours very truly, WILLIAM D. HOOVER."

Mr. SIDDONS: The next letter is dated May 29, 1902, and it is objected to on the ground that it is immaterial and irrelevant to the issues in this case, and, on the further ground, that whatever differences, if any existed as to the state of the Franz trust account
226 is adjusted by the agreement of June 16, 1902, between the trust company and Mr. Daniel.

The letter is as follows:

"MAY 29, 1902.

Mr. T. Cushing Daniel, City.

DEAR SIR: We have received another letter from Mrs. Franz directing us to record the deed to her, unless your efforts to secure a new loan are successful. Unless we hear favorably from you within the next few days, we shall be compelled to record the deed, in accordance with Mrs. Franz's directions.

Yours truly, WILLIAM D. HOOVER,
Trust Officer."

Mr. SIDDONS: The next letter dated June 19, 1902, is objected to on the same grounds that have been urged with respect to the previous letters from this company to Mrs. Franz.

The letter is as follows:

"JUNE 19, 1902.

Mrs. Elenora T. Franz, Brightwood, D. C.

MY DEAR MRS. FRANZ: On June 17th we received a letter from Mr. T. Cushing Daniel, enclosing a check for $500, on account of overdue interest on the notes secured on the West Eckington property. Mr. Daniel states in his letter that he thinks he has made sale of the property, which will require about sixty days in order to be consummated. He requests that the payment of $500 be in the nature of an extension of the time in which to pay off the debt, to the extent of sixty days. We find that the amount of principal, with accrued interest, is about $32,600. Mr. Daniel requests that we accept, in settlement of debt and interest, at the end of the period

of sixty days, $32,500, which we regard as a very good compromise, considering the amount of trouble which would come to you in case you were compelled to buy in the property, and to foreclose your sale, and we recommend that you instruct us to accept this amount as a compromise, and in full payment of the debt. This offer of Mr. Daniel's we have succeeded in getting only as a result of persistent efforts through the mail and by telephone.

Yours very truly, WILLIAM D. HOOVER,
Trust Officer."

"AUGUST 4, 1902.

Mr. T. Cushing Daniel, Care Armat Picture Moving Co., 1101 Pennsylvania Avenue, N. W., City.

DEAR SIR: We have received your letter relating to a sale of the Northwest Eckington property, and requesting a renewal of the loan thereon belonging to the estate of the late Jacob Franz.

Your letter was referred to Mrs. Franz, and in response to a requested interview she has called and stated that the renewal will be made only upon the following conditions, viz: first, not less than thirty-five cents per square foot to be paid for the ten lots on
227 Rhode Island Avenue to be released. Second, there must be executed a new deed of trust the old one to be released, and new notes are to be given in place of the ones now held here for collection. Third, the rate of interest must be six per cent, and not five per cent, as requested.

These are the only conditions under which Mrs. Franz will consider your proposition.

Yours very truly, WILLIAM D. HOOVER,
Trust Officer."

"AUGUST 25, 1902.

T. C. Daniel, Esq., care Armat Moving Picture Co., The Evening Star Building, City.

DEAR SIR: Mrs. Franz has called upon us and desires to know what you intend to do in reference to the proposition mentioned in our letter to you of August 4th. We will thank you to advise us at your very earliest convenience whether or not your syndicate is ready to accept the proposition mentioned in that letter.

Yours truly, WILLIAM D. HOOVER,
Trust Officer."

Mr. SIDDONS: The next letter of September 17th, 1902, is a letter to Mrs. Franz to which the same objections are urged as urged to the previous letters from the company to Mrs. Franz.

The letter is as follows:

"SEPTEMBER 17, 1902.

Mrs. Elenora T. Franz, Brightwood, D. C.

MY DEAR MRS. FRANZ: I met Mr. Daniel on the street this afternoon and informed him of your visit, and, after considerable talk with him, ascertained that his proposition is to be presented to us

upon the return of Mr. Campbell to the city. From what Mr. Daniel states, the proposition appears to contemplate the payment of about $6,000 and the securing of a release of several of the lots from the deed of trust for the purpose of improving the same with substantial dwellings. He informed me that the only matter now unsettled is the exact form the proposition is to take, and that the details will be arranged within the next ten days. As soon as we receive some proposition in writing from him we will advise you of it, and, unless we do receive such proposition on or before the 15th of October, we shall write him a letter informing him that unless payment is made on or before November first, a sale of the property will have to take place to pay the debt now due.

Yours very truly, WILLIAM D. HOOVER,
Trust Officer."

Mr. SIDDONS: The next is a letter of October 27th, 1902, to which the same objections are made.

The letter is as follows:

228 "OCTOBER 27TH, 1902.

Mrs. Elenora T. Franz, Brightwood, D. C.

DEAR MADAM: We have had a conversation with Mr. T. C. Daniel upon the subject of the West Eckington property. Mr. Daniel has a proposition looking to the release of a portion of the ground upon the payment of a certain part of the debt, and proposes to come to see you personally about the matter, either tomorrow or the day after, We suggested to him that he write you informing you when he would call, in order that you might not be put to the trouble and annoyance of waiting in for him.

In the event no satisfactory arrangement is made between you and Mr. Daniel, we suggest that you call in as soon as convenient and arrange for a sale under the deed of trust, or for the placing on record of a deed in trust to you, which deed we have here in our files.

Yours truly, WILLIAM D. HOOVER,
Trust Officer."

"NOVEMBER 1, 1902.

T. C. Daniel, Esq., Care Armat Moving Picture Co., City.

DEAR SIR: Mrs. Franz has been to see us and states that assuming all taxes have been paid, she is favorably inclined to your proposition. Before definitely deciding, however, she has directed us to procure from the proper office tax certificate on the entire portion of the tract still owned by you and your associates. If you already have tax certificates of a recent date the necessity of ordering new ones and of awaiting their completion will be avoided. We shall order the certificates during the early part of next week unless before that time you have informed us that you have comparatively recent ones, which will serve Mrs. Franz's purpose.

Yours truly, WILLIAM D. HOOVER,
Trust Officer."

Mr. SIDDONS: The next letter is dated November 4, 1902, and the same objections are urged to this letter as before.

The letter is as follows:

"NOVEMBER 4, 1902.

Mrs. Elenora T. Franz, Brightwood, D. C.

MY DEAR MRS. FRANZ: In accordance with your directions, I have had an interview with one of the title companies here, in order to obtain an accurate description of the part of Northwest Eckington still owned by Mr. Daniel and his associates. As soon as I can obtain an accurate description I shall order tax certificates on the part still owned by them.

Yours very truly, WILLIAM D. HOOVER,
Trust Officer."

Mr. SIDDONS: The next letter is dated December 3, 1902, and the same objections are urged to this letter as were urged to the other letters from the company to Mrs. Franz.

229 The letter is as follows:

DECEMBER 3, 1902.

Mrs. Elenora T. Franz, Brightwood, D. C.

MY DEAR MRS. FRANZ: Mr. Daniel came in this afternoon with the extension agreement signed by himself and Mr. Campbell and Mr. Redman. The agreement is now ready for execution by you, and the deed of release is also to be signed by you as a direction to Mr. Ruff to execute the same. Please call in tomorrow, if convenient.

Yours very truly, WILLIAM D. HOOVER,
Trust Officer"

Mr. SIDDONS: The next letter is dated December 8, 1902, and the same objections are made to it.

The letter is as follows:

DECEMBER 8, 1902.

Mrs. Elenora T. Franz, Brightwood, D. C.

MY DEAR MRS. FRANZ: Mr. Daniel came in this morning bringing with him tax certificates and receipted tax bills showing payment of the taxes on the Northwest Eckington property. These he has left for your inspection. It would be well for you to call in at your earliest convenience and execute the agreement and the deed of release, as Mr. Daniel is anxious to make some progress towards the erection of the houses about which he has spoken to you.

Yours very truly, WILLIAM D. HOOVER,
Trust Officer."

"DECEMBER 17, 1902.

T. C. Daniel, Esq., 627 E street N. W., Washington, D. C.

DEAR SIR: Enclosed we send you check of this company payable to your order in the amount of $248. This is in settlement of the recent adjustment of the amount due by you on your notes secured

on lot 35 in Metropolis View, which notes are now held here for collection to the credit of the account of Mrs. Elenora T. Franz.

It appears that in the matter of adjusting the amount due on the notes, which was arranged by you and Mr. Howard last summer, no account was taken of the notes of one Smith, which you had deposited here for credit to the account of the Franz notes upon payment. For the reason you are entitled, as we understand it, not only to the unpaid notes of Smith, which were delivered to you a few days ago, but also to the principal, $200, of one of the notes which was paid in September, and also to the semi-annual instalment of interest, $48, which accrued and was paid at that time.

Yours, truly, WILLIAM D. HOOVER,
Trust Officer."

Mr. SIDDONS: The next letter is dated April 9, 1903, and is objected to as immaterial and irrelevant, coming after the execution of the contracts in issue herein, and having no bearing upon those issues.

The letter is as follows:

230 "APRIL 9, 1903.

Mr. T. C. Daniel, 627 E street N. W., City.

MY DEAR MR. DANIEL: Mrs. Franz called today and positively declined to release any more of lot 35 in Metropolis View. She states that she will maintain this position and hold a lien upon the entire property until her debt is paid. It is needless therefore for me to retain the papers which you delivered a few days ago, and I therefore return them to you herewith.

Yours very truly, WILLIAM D. HOOVER,
Trust Officer."

By Mr. RIDOUT:

Q. Mr. Hoover, I ask you to produce certain original letters which you received from Mr. Daniel. Have you been able to do so? A. I have the letters here. (Producing same.)

The letters are as follows:

"WASHINGTON, D. C., *June 16th*, 1902.

Mr. Thomas R. Jones.

DEAR MR. JONES: As per my recent understanding with your Mr. Howard and yourself as to the amount due from me under the Franz deed of trust, I herewith enclose check for $500. As explained to you, this property has been sold, but there is delay in the certificate of title. The present payment of $500, it is understood, permits an extension of time up to sixty days in which to close up the sale, and until a new deed of trust is negotiated there will be no foreclosure if the interest is promptly paid.

Very truly yours, T. CUSHING DANIEL."

"WASHINGTON, D. C., *July* 24, 1902.

Mr. Tho. R. Jones, Nat. S. D., S. and T. Co., Wash., D. C.

DEAR SIR: In order to close up that deal on the N. W. E. property I find that it will be necessary to extend the present loan, as the

company to whom I am selling the property desire this done before assuming the present trust and taking title to the land. They state that this is necessary as it is difficult for a corporation to make a loan—as a company. It is the purpose of this company to pay off this loan as fast as possible, and I think the money will be turned in faster than Mrs. Franz will want it. I would therefore make the following suggestions, viz., upon the payment of $3,240 cash ten lots 20 by 90 on Ri. Ave. will be released for immediate improvements with houses not to cost less than $3,000 each. The balance of the loan of the $28,760, to be extended at five per cent. with the individual endorsements of T. Cushing Daniel, C. M. Campbell and S. C. Redman.

The new company can then assume the trust and pay it off. The improvements will increase the value of all the ground and, in addition put the present trust upon the property in better shape for Mrs. Franz, with additional security, which should justify the reduction of interest to five per cent., which now obtains here.

231 The company buying the property would naturally object to paying more as there is about 475,000 feet in the land which is about seven cents per foot as measured by the trust, the $3,240 for releasing only 18,000 feet is a liberal calculation.

Statement		$32,500
Credit	$500.00	
10 lots released	3,240.00	3,740
	3,740.00	28,760

This will clean up all complications in the account and put the trust in good shape.

Very respectfully, T. C. DANIEL."

"JULY 24, 1902.

Mr. Thomas R. Jones.

MY DEAR MR. JONES: I hope you will take friendly interest in the enclosed communication. This property has given me a great deal of trouble and worry, and I would hate very much to have it thrown on my hands again. The additional endorsements of Mr. Charles M. Campbell, whom you know, and Mr. Redman, would make this trust absolutely good and should satisfy Mrs. Franz. If she should need more money your company could ask no better security for a loan.

Through the troubled history of this whole transaction wherein two of the principals have died, you have always been a helpful friend of all concerned, and I hope you will see your way clear in assisting me to close up this transaction and putting it in good shape. Mrs. Franz will lose nothing and increase her security by complying.

Hastily and truly yours, T. C. DANIEL."

"AUGUST 30, 1902.

Mr. William D. Hoover.

DEAR SIR: Your favor of August 25th received. I have just had a conference with Mrs. Franz and am trying to make some arrange-

ments to meet her wishes. Mr. Campbell has been out of the city up to the present time and I have just returned after two weeks' absence from the city. Will take this matter up with Mr. Campbell at once and let you know the result.

Very respectfully,

T. C. DANIEL."

Mr. SIDDONS: This a letter from Mrs. Jacob Franz to Mr. Thomas R. Jones, dated October 23, 1902. That letter I object to on the same grounds urged to the letters to Mrs. Franz from the trust company heretofore offered in evidence by the defendant.

The letter is as follows:

"BRIGHTWOOD PARK, *October* 23, 1902.

Mr. Thomas R. Jones.

DEAR SIR: I have come to the conclusion in regard to the Eckington property it is no use to put it off longer. Rather than have it sold for tax title I will have it in my name, as I am convinced Mr. Daniel does not intend to do anything further.

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So you may make all necessary arrangements and I will bear the expense as I believe that it will come to this sooner or later. Please attend to this at once, and oblige,

MRS. JACOB FRANZ.

Brightwood, D. C."

By Mr. SIDDONS:

Q. Mr. Hoover, referring to this letter of August 4, 1902, from the trust company to Mr. Daniel, offered in evidence—produced by you and offered in evidence, a letter, you will remember, in which, speaking on behalf of Mrs. Franz, you state certain conditions to be complied with in order to obtain a renewal of the loan. Three conditions are named in the letter. Can you tell me if—is it not a fact that the conditions there imposed were not in fact complied with—were not carried through as in that letter? A. The condition as to release was not complied with because of some arangements which had been made under the old deed of trust providing for a release at a lower figure. That, I believe, is still in force. There has been no new deed of trust executed. The old deed of trust still remains as a lien and the rate of interest still remains at six per cent.

Q. So of the three conditions that you were imposing in this letter of August 4th, only the third was ever acted upon or carried out—the rate of interest does remain at six per cent. as originally contracted for? A. Yes.

By Mr. RIDOUT:

Q. Mr. Hoover, will you please state to what the releasing rate was reduced? A. I think it was twenty-five cents. That reduction took place before this correspondence commenced. I am not sure that it was ever in the nature of a reduction. My impression is that it was in the nature of a collateral agreement at the time the trust was executed, providing for a release at a certain figure.

By Mr. SIDDONS:

Q. And whatever that agreement provided, there has never been any reduction from that figure? A. No.

By Mr. RIDOUT:

Q. Then, the figure was raised, was it not, in connection with the ten lots released because thirty-five cents was required—the requirement of thirty-five cents was waived by reason of—— A. It had to be withdrawn on account of this agreement which, as I say, was made at the same time the deed of trust was executed.

By Mr. SIDDONS:

Q. You found after August 4th, that there was a contract already in existence by which Mrs. Franz and the company felt bound to release all lots at a price that was named in that contract? A.
233 Yes. If I recollect, Mr. Siddons, that was in the contract of sale made by Mr. Jacob Franz with Mr. Daniel.

Q. Referring, Mr. Hoover, to those various letters that have been produced, is it not a fact that this deed of trust—the Franz deed of trust had been overdue as to principal for a very considerable number of years, and was overdue and remained until December, 1902, when there was a definite extension to December, 1904?

Mr. RIDOUT: Objected to because it calls for the legal opinion of the witness which, however valuable, is not evidence.

Mr. SIDDONS: I don't want a legal opinion from the witness. I asked him for a fact.

A. The notes were long overdue at the time those letters were written.

Q. Then, the indebtedness had been carried as an overdue account for quite a number of years, had it not, Mr. Hoover? A. So far as I know, yes.

Q. And there never was a definite extension of the principal of the indebtedness until December, 1902, when the extension was made in that memorandum agreement which you have produced on a prior occasion? A. Yes.

By Mr. RIDOUT:

Q. The indebtedness was no less due and unpaid after the extension than before, was it?

Mr. SIDDONS: Now, that is calling for a legal opinion.

A. I should say that, as the result of that agreement, the principal of the debt was definitely extended to December, 1904.

—— ——.

Subscribed before me this — day of ——, 1905.

——, *Examiner.*

Thereupon T. CUSHING DANIEL, having been heretofore duly sworn, was re-called and further interrogated in rebuttal.

Direct examination.

By Mr. SIDDONS:

Q. Mr. Daniel, Mr. Campbell testified that you first approached him on the subject of this Eckington Improvement land in Washington in October or November of 1901. What is the fact about that, and were you in Washington in October or November, 1901? A. No, sir, and during the month of August and I think a part of September I was in Brooklyn, at the St. George Hotel, and then in New York, attending to the business of the Armat Moving Picture Company, until the latter part of January.

Q. What year? A. That was January, 1902.

Q. 1902? A. Yes. I returned to Washington only for Christmas day and returned the next day to New York, and, with that exception I was not here at any time during September and October, and up to February—the latter part of January.

234 Q. On the occasion of this hasty trip that you made to Washington from New York to spend Christmas day, as I recall your saying, did you go out to this property with Mr. Campbell, as he testified? A. I did not.

Q. Then, from the fall of 1901, until your definite return to Washington in the latter part of January, 1902, did you have any conversation in Washington with Mr. Campbell about this property between those periods? A. No, sir. All the conversation I had with Mr. Campbell was in New York during that time in regard to this property.

Q. Mr. Campbell has testified, Mr. Daniel, that at the time of the negotiations which led up to the contract of March 13, 1902—the contract which has been called the Sanitary Dwellings Company contract, this Eckington property had not a single house upon it; that it had no improvements of any kind except that Rhode Island Avenue had a street car running through it, but the Avenue was practically impassible, and that, using the ward "we," whatever that may mean, spent several hundred dollars in making is passible. I wish you would state just exactly what the situation was with reference to the property at this time. A. Rhode Island Avenue had been dedicated and graded as far as Sixth street. A very fine trunk sewer had been laid up Fifth street to Rhode Island Avenue, and out Rhode Island Avenue the entire length of the property. A lateral sewer had been laid from Fifth to Sixth streets on the North side—some houses had been built on the North side of Rhode Island Avenue between Fifth and Sixth streets, and the city water carried into the property, and, in addition to the improvements of Rhose Island Avenue, we had spent $4,000 in grading the property along Albany and Fifth streets until seventy five per cent. of the property was in the condition to be built upon.

Q. Was any sidewalk constructed on any part of it at this time? A. Yes, sir. The City had built a fine granolithic sidewalk on the North side of Rhode Island Avenue from Fifth to Sixth streets.

Q. Were there any houses upon the property at the time? A. Yes, sir. There was a comparatively new cottage that cost $3,000 to build, No. 512 Rhode Island Avenue. Just East of it Mr. E. E. Hoge had built a cottage costing him $2,300. There was a brick residence just adjoining him which I sold to a Mr. Smith for $3,200. Then, another frame owned by Mr. Trotter, that he values at $2200.00, and still another adjoining the Trotter cottage owned by Mr. Miller of about the same value. In addition to these, Mrs. Harris owned a cottage that is worth about $2200, the house alone. That is her price for it.

Q. Mr. Daniel, Mr. Campbell testified that part of this ground in controversy was farmed at the time, as I remember his testimony; it continued to be a farm up for sometime after the first contract was made. What is the fact about that? A. The land in question was never farmed. Mr. Aaron Smith had an agreement with the company——

Q. Was that agreement in writing? A. Yes, sir.

235 Q. Is that the agreement? (Handing witness paper.)

A. (After examining same.) Yes, sir, that is it.

Mr. SIDDONS: I offer it in evidence.

(And the same is filed by the Examiner, marked Exhibit Rebuttal 1.)

Mr. RIDOUT: Objected to as immaterial.

A. (Continuing:) And Mr. Smith was simply allowed to——

Q. Well, he got that contract? A. He got that contract, yes, sir.

Q. And what he did he did under that contract? A. With the exception that, without saying anything to us, he planted a few vegetables in the extreme Southern end of the property.

Q. Mr. Daniel, can you tell me when it was that Rhode Island Avenue was condemned by the City and Suburban Railroad Company. A. It was condemned, as far as I can remember, in 1897, and they paid the Northwest Eckington Improvement Company thirty cents a foot for the lots taken within the lines of Rhode Island Avenue by appraisement of the Committee appointed by the court as to its value.

Q. Mr. Daniel, Mr. Campbell testified that he went to see General Sternberg and reported to you that General Sternberg said that the houses that the Sternberg Sanitary Company had constructed cost about $2800 or $2900 apiece. What is the fact about that, Mr. Daniel? A. We went out and looked at some of those sanitary dwellings built by General Sternberg's company on Bates street, just South of R street in Eckington, and Mr. Campbell and myself both went into two of the houses, and we ascertained from the Sanitary Dwellings Company that they cost $2400 each.

Q. Now, how did you ascertain that? A. My best recollection is that Mr. Campbell found out from General Sternberg and I subsequently found it out from Mr. Wardman who built them.

Q. Did Mr. Campbell ever give you any of the literature of General Sternberg's Sanitary Improvement Company showing any of

the figures? A. Yes, sir, he brought down a prospectus of the company.

Q. Is that it? (Handing witness paper.) A. (After examining same.) Yes, sir.

Q. When was that brought in, do you remember—when did Mr. Campbell bring it to you? A. Early in the formation of the plans of the Washington Sanitary Dwellings Company that Mr. Campbell and the Eckington Company were promoting, or that Mr. Campbell was getting up really.

Mr. SIDDONS: I offer this in evidence, with especial reference to page 3. That pencil memorandum on there, Mr. Ridout, ought to come out, because that is no part of the prospectus.

(And the same is filed by the Examiner, marked Exhibit Rebuttal 2.)

Mr. RIDOUT: Objected to as immaterial.

236 Q. Mr. Daniel, on page 4 Mr. Campbell testified to a conversation that he claims to have had with you on F street. I don't care to burden the record with repeating the answer, but it begins about the middle of page 4 of the defendant's testimony, where he answers: "Yes, sir, about two months after he met me one day on F street and told me he was very much discouraged." Did such a conversation ever occur between you and Mr. Campbell? A. No, sir, I haven't the slightest recollection of any such conversation.

Q. On page 10, Mr. Daniel, of Mr. Campbell's testimony, he states that he made inquiries of you as to the shape the Franz deed of trust was in, and whether there was any danger of foreclosure from Mrs. Franz, and that you told him you thought the $500 that had been paid in June to Mrs. Franz would satisfy her. He further testified that this $500 was paid through you to the trust company, and that that money was provided by Mr. Campbell. I wish you would state the circumstances under which Mr. Campbell paid over to the Improvement Company—the Eckington Improvement Company that $500. A. Mr. Campbell had, as he thought, the plans of the Washington Sanitary Dwellings Company in shape to get a deed from the Northwest Eckington Improvement Company for this property. A certificate of title had been furnished by the Columbia Title Company and a meeting had been called, so Mr. Campbell informed me, of the Sanitary Dwellings Company to formally take over the deed that I had the Northwest Eckington Improvement Company execute at his request, and I told him that, in order to give some evidence that he would go to work and carry to completion the plans that Redman and myself would require that he put up a deposit, or that the Sanitary Dwellings Company put up a deposit of $500 as an evidence of good faith, and to help carry the property while they were working on the sale of the stock of the Sanitary Dwellings Company; otherwise that it would take probably sixty or ninety days for them simply to experiment, in the meanwhile we would have to carry the interest charges on the trust.

Q. Was the deed—proposed deed that you have mentioned from

the Northwest Eckington Improvement Company to the Sanitary Dwellings Company ever executed? A. Yes, sir, prepared and executed.

Q. Was that prior to June when the $500 was paid? A. I had the deed in my possession and delivered it to Mr. Campbell after he put up the $500 deposit.

Q. Is that the deed? (Handing witness paper.) A. (After examining same). Yes, sir.

Q. Did he subsequently return that to you? A. He did.

Mr. SIDDONS: I offer that in evidence.

(And the same is filed by the Examiner, marked Exhibit Rebuttal 3.)

Mr. RIDOUT: Objected to as immaterial.

Q. Who got the certificate of title from the Title Company that you refer to? A. Both Mr. Campbell and myself went to the Title Company and ordered a certificate.

237 Q. Is that it? (Handing witness paper.) A. (After examining same.) Yes, sir.

Mr. SIDDONS: I offer that in evidence.

(And the same is filed by the Examiner, marked Exhibit Rebuttal 4.)

Mr. RIDOUT: Same objection.

Q. Mr. Campbell has testified, Mr. Daniel, on page 13, that the contract of October 23, 1902, was prepared by him, Mr. Campbell, in your office in October, 1902, or about that time. What is the fact about that? That you were present when he prepared it. A. At that time I had no office in Washington. I rented my office on June 1, 1903.

Q. What office? A. At 1410 Ames Building, G Street.

Q. Mr. Campbell testified on page 24, Mr. Daniel, that the increase in the cost of the five houses on the South side of Rhode Island Avenue was called for by your insisting on those houses being located on the South side of the street car track, and that as a result there were extra charges for brick—brick-laying, and that there was also an angle on the West end of the row which cost him to enlarge the two West houses, which also increased the cost of them. What is the fact about that? A. My best recollection is that there was no controversy in regard to the location of the houses on the South side of Rhode Island Avenue, the reason being that the City water was more convenient to the lots at that point, and it was the intention to build up both sides of Rhode Island Avenue. It was immaterial as to on which side the houses were to be built at that time. It is true that the ground was a little lower at that point, but this fact obviated the digging of any cellars, and the extra cost was simply a matter of brick work that made the cellars, and, as a matter of fact, all the houses in that row are of the same size with the exception of the extreme Western house, which is only larger by the addition of a wooden bay window that is run up on the side of it.

Q. On page 27 Mr. Campbell testifies, at the bottom of page 27, Mr. Campbell testifies that you suggested the idea that it would

be well to get rid of Mr. Redman; that he was weak financially for an enterprise of the kind, and you suggested that a company be organized. Then he says, I don't know which one suggested it. I wish you would state what is the fact regarding the suggestion about getting rid of, as Mr. Campbell puts it, of Mr. Redman, and what, with respect to the proposed warehouse operations, about which we heard a good deal from Mr. Campbell? A. His statement as to my suggesting the idea of getting rid of Mr. Redman is absolutely untrue, and was suggested by Mr. Campbell when he wrote up a prospectus showing the wonderful profit of building warehouses on this railroad frontage, and after the matter was discussed for some time it was eventually reduced to writing, and I submitted the proposition to Mr. Redman in regard to acquiring his one-third interest only in the railroad frontage, said frontage
238 being 200 feet by an average depth of about 150 or 200 feet, which was a very small portion of the tract.

Q. Is that the proposed agreement with Mr. Redman that you refer to? (Handing witness paper.) A. (After examining same.) Yes, sir.

Q. Who prepared that? A. Mr. Campbell and myself both got that up.

Q. And this is the one that you submitted to Mr. Redman? A. Yes, sir.

Mr. SIDDONS: I offer that in evidence.

(And the same is filed by the Examiner, marked Exhibit Rebuttal 5.)

Mr. RIDOUT: Objected to on the ground of immateriality.

Q. What frontage did you say that was? A. 200 feet.

Q. Frontage? A. 800 feet frontage by an average depth of 100 feet or 200 feet.

Q. What became of that proposition? A. Mr. Redman took it to——

Mr. RIDOUT: One moment, now. I object to any statement by this witness as to what transpired between him and Mr. Redman unless Mr. Campbell was present, or the witness can testify that Mr. Campbell was afterwards acquainted with what was done.

A. (Continuing:) Redman had his lawyer draw up an alternate proposition.

Q. What was the final upshot of it, Mr. Daniel? A. The upshot of it was that nothing came of it at all.

Q. There was simply a discussion regarding the advisability of utilizing some of this ground for railroad frontage for warehouse purposes? A. Yes, sir.

Q. Did Mr. Campbell, in that connection, ever prepare any plat or prospectus? A. Yes, sir, he prepared both; a prospectus and plat showing how the ground could be utilized.

Q. Is that the plat he prepared? (Showing witness paper.) A. (After examining same). Yes, sir.

Q. In whose handwriting is that memorandum at the bottom of that? A. That is Mr. Campbell's.

Mr. SIDDONS: I am going to offer that in evidence, Mr. Ridout.
(And the same is filed by the Examiner, marked Exhibit Rebuttal 6.)

Mr. RIDOUT: Objected to as immaterial.

Q. Is this the prospectus, Mr. Daniel, that Mr. Campbell prepared for these warehouse purposes? A. Yes, sir.

Q. Did he mark that plat with reference to it? A. Yes, sir.

Mr. SIDDONS: I offer those in evidence.
(And the same are filed by the Examiner, marked Exhibit Rebuttal 7.)

Mr. RIDOUT: Objected to as immaterial, the same as to the plat.

239 Q. Mr. Daniel, on page 39 of Mr. Campbell's testimony he states, referring to the Malnati transaction and his demand upon you and Mr. Redman and the Improvement Company for the payment of $4,000 out of the proceeds, that he told you that he had advanced the money for the Sanitary Dwellings Company with the understanding, both verbal and written, that it was to be paid to him out of the first sale of land belonging to the company, and that he called your attention particularly to paragraph 6 of the contract, dated October 23, 1902. What have you to say as to that? A. The contract of the Sanitary Dwellings Company referred to the sale of stock in which Mr. Campbell was to realize money, and out of that he was to get the cost of organizing the company, getting the charter, and so on, but, after he failed in the Sanitary Dwellings contract, and had lost the money that he had expended in the effort, I, representing the Northwest Eckington property, desired to have him get it back, if he succeeded, in the October contract, and flatly declined to allow him to insert that it should be returned out of the first sales of any of the land, but that it should be accounted for.

Q. That is the language of the contract as it stands? A. Yes, sir.

Mr. RIDOUT: The answer is objected to, so far as it undertakes to give the conversation between the witness and Mr. Campbell anterior to the final execution of the contract, on the ground that the conversation was merged.

Q. He states in his testimony to which I called your attention beginning at the bottom of page 39, that he, Mr. Campbell, called your attention to paragraph 6 of the contract, dated October 23, 1902, when he sought to get your assent to the payment over to him of the proceeds of the Malnati sale of $4,000. What is the fact about that? A. He did nothing of the kind, so far as I can remember.

Q. Mr. Daniel, Mr. Campbell testified regarding certain letters which were exchanged between himself and you, when either one or both of you were out of the city in July or August, 1902. What do those letters relate to? A. Those letters could not have related to anything but the business of the Armat Motion Picture Company at that time, for the reason that Mr. Campbell had Mr. Burnley em-

ployed during August and September in selling the stock of the Sanitary Dwellings Company, and there was not any question of raising money between Mr. Campbell and myself at that time.

Mr. RIDOUT: The question and answer are objected to because the letters speak for themselves.

Q. Mr. Daniel, Mr. Campbell testified that in June, 1902, he paid some $122 and some cents for taxes upon the property in controversy here, and that he did not learn until some months afterwards that there was at that time a considerable amount of other taxes in arrears, and was much surprised when he learned it. I wish you would state under what circumstances that $122.91 was paid
240 by Mr. Campbell, and as to any communications you made to him, if any, regarding the arrears of taxes referred to? A. Mr. Campbell and myself went down to the tax office in the early part of June, as well as I remember, and we asked the clerk for one particular tax bill that covered the tax sale of the property in order to get the total, so that this Columbia Title Company would not note it on the certificate to the Sanitary Dwellings Company.

Q. You mean the certificate of title that was introduced here this evening in evidence? A. Yes, sir.

Q. Well, sir. A. And the subject was discussed at the desk of the clerk in the basement of the clerk's office to the North, and he read off the different arrearages of taxes on the property. And I stated to Mr. Campbell at the time that I saw no reason for our paying the sum total of the taxes; that we had allowed them to remain unpaid because the tax office had charged a great many penalties during some previous years, wherein we could not get a correct statement of taxes for the reason that they declined to separate the lots of the individual purchasers of the property, but that Congress had passed a law reducing or giving property owners the privilege of paying simply six per cent. in lieu of all penalties, and that we could now avail ourselves of that act. He said that was all satisfactory, and we simply paid for the year to redeem the property at tax sale.

Q. When those arrearages were finally paid the succeeding fall or winter what was paid in the way of interest? A. Simply a straight six per cent. interest.

Q. Can you tell whether or not the act of Congress referred to had been enacted at the time of this call at the tax office or not? A. My impression is that it had just passed. Congress had adjourned at that time, and I was waiting for it, of course. I knew the bill was pending and was pretty well satisfied that it would pass.

Q. Mr. Daniel, in your examination in chief, you testified regarding the becoming of an accommodation party on the note for Mr. Campbell at his request for some $2000, and you fixed the date of the transaction as sometime in March, 1902, or thereabouts. How did you come to fix that date, and was it correct? A. I went around to the Citizens National Bank.

Mr. RIDOUT: Objected to. He is evidently going to give hearsay.

Q. Don't state any conversation, Mr. Daniel. Just state what you heard and what you did? A. And he referred to his books and gave me March, the date that I testified to, as the correct one at which this note in question was discounted.

Mr. RIDOUT: Answer objected to as hearsay.

A. (Continuing:) And, with the exception of the date, the testimony that I gave in reference to that note is absolutely correct, and almost verbatim of the way the transaction occurred at the bank.

Q. A little out of order, Mr. Daniel, chronologically, but I want to ask you what the contract was. Mr. Campbell stated that he never tendered any contract for your signature or that of the 241 Improvement Company, or Mr. Redman, in July, 1903. What contract did he tender to you at that time? A. The contract tendered to me in July was a facsimilie of the October contract, with the exception that he had inserted an additional sentence stating that whereas he had performed the requirements of the contract, he was entitled to a one-third interest in the property of the Northwest Eckington Improvement Company.

Mr. RIDOUT: Answer objected to as giving the contents of a written instrument without any excuse for its non-production, and, on the further ground, that it is irrelevant—the instrument, if produced, would be irrelevant.

Q. That contract was not executed—that amended contract was not executed, was it? A. No, sir. I declined, as stated in my testimony in chief.

Q. Who took the contract? A. Mr. Campbell, after talking it over with me and my declining to execute it, or to have Redman execute it, in my office, room 11, 1410 G street, he came back and asked me to let him have it, and at that time and in that room he left the little memorandum stating his position, addressed to Redman and myself, that has already been filed as an exhibit.

Q. Mr. Campbell testified on page 145 that, at the time he brought in his statement of account—about that time he also brought in checks showing his disbursements. On page 145, "I first brought all the checks into Mr. Daniel's office, showing the confidence I had in him, and left it to him to draw off a list of checks." What have you to say about that statement? A. He never left any checks with me in his life.

Q. Did you ever see the checks which purport to be disbursements made by Mr. Campbell until he produced them in evidence here in response to the call of your counsel upon him? A. He left the checks—I saw them in the possession of John Mitchell, who said that he could not do anything with them.

Mr. RIDOUT: I object to what Mitchell said.

A. (Continuing:) And gave them back to Mr. Campbell. Mr. Mitchell has already testified to that.

Mr. RIDOUT (to the witness): Well, then, let it stand. You can't testify to it.

Q. Those checks Mr. Campbell handed to Mr. Mitchell and Mr. Mitchell handed them back to him? A. I don't remember that I was present when he delivered them to Mitchell, or whether I was present when Mitchell gave them back to him, but I simply know that it is a fact.

Q. Mr. Mitchell testified about that? A. Yes, sir.

(Without concluded the examination of the witness, an adjournment at this point was taken until Saturday, June 3, 1905, at 2 o'clock p. m.)

242 WASHINGTON, D. C.,
THURSDDAY, *June 15th*, 1905—11.30 o'clock a. m.

Met, pursuant to agreement, to resume the taking of testimony in rebuttal on the part of the complainants.

Present, on behalf of the complainants, Frederick L. Siddons, Esq.

Present on behalf of the defendant John Ridout, Esq., the parties litigant, and Examiner.

Whereupon T. CUSHING DANIEL, called as a witness on the part of the complainants, in rebuttal, having been heretofore duly sworn, was examined and testified as follows:

Direct examination.

By Mr. SIDDONS:

Q. Mr. Daniel, on page 73 of the defendant's testimony, Mr. Ross testified he was referring to his own purchases of land, being interrogated about some purchases of land that he had made, and he was asked how the property he purchased compared, in his opinion, with the property located on the railroad in Northwest Eckington, and he replied that he thought it was probably better, and some other questions *are* asked him more particularly locating the land, as for instance, he was asked: "Were you speaking of the tract of ground in controversy here as lying north of Rhode Island Avenue?" "A. The whole tract, yes, sir." I wish you would state, Mr. Daniel, what the fact is regarding the location of the Northwest Eckington improvement property with relation to the property purchased by Mr. Ross, both as to its topographical condition, and as to its value. A. The property that Ross bought is situated *to* the extreme end—south end of the property owned by the Northwest Eckington Improvement Company, and is really lower in point of grade than the property adjoining it on the north owned by the Eckington Improvement Company. Mr. Ross had to grade in the streets to reach *in* his property at considerable cost, and, as a matter of fact, the center Eckington property referred to by Mr. Ross, I will say about one-third of it, of this lower portion, is considerably below grade, whereas the third on the western boundary is very much above grade, and it would require a great deal of expense in grading this property, which would not be the case with the land owned by the Northwest Eckington Improvement Company, and any fair

judge of the property, with an accurate knowledge of these facts, would consider the Northwest Eckington property more valuable.

Mr. RIDOUT: The last part of the answer is objected to as not testimony but simply an expression of the witness as to the probable opinion of somebody else.

Q. On page 74, Mr. Ross stated that, as to the whole tract, he thought the Center Eckington property was worth double as much as the tract north of it, which he had previously stated was the property of the Improvement Company. What is the fact about that, as to the value? A. I think the answer that I have just made practically answers that question, and there is no doubt about the Northwest Eckington property, with Rhode Island Avenue
243 dedicated through it, with its sewer and water improvements, is a more valuable property than the Center Eckington.

Q. On page 83 of Mr. Campbell's testimony, his attention was called by his counsel to your testimony, and Mr. Redman's, to the effect that those two gentlemen had brought suit against Mr. Campbell on some indebtedness, and Mr. Campbell testified that they never brought suit. I wish you would state just what was done in that connection—in connection with the claim of Daniel and Redman against Mr. Campbell. A. Mr. Redman brought a suit against Mr. Campbell through Messrs. Ralston & Siddons; the papers in the case were all drawn up and Mr. Campbell paid the amount to Mr. Redman through Ralston & Siddons, and Mr. Redman paid the charges for the collection.

Q. Do you know, Mr. Daniel, if the suit was actually instituted or not? A. I think the bill was signed and everything ready to be put on record when Mr. Campbell came down and headed it off. And in regard to the other suit, I put that claim in the hands of the same attorneys, and the papers were finally drawn up in the case. I signed the bill and left it with Mr. Ralston. Mr. Campbell then paid $350 of the amount over to Mr. Ralston, and a suit is now pending against Mr. Campbell for the balance of the claim.

Q. Mr. Daniel, on page 85 of Mr. Campbell's testimony, in a question put to him by his counsel, he has told that you claimed that an advance had been made by you by check dated November 24th, 1903. He was then asked from what source did you derive that money and Mr. Campbell testified that the money was derived from a deposit made on the Malnati sale—the first Malnati sale; that he, Mr. Campbell, charged himself with the money but did not return it to you because it was not your money. What is the fact as to that? A. Mr. Campbell got my personal check for that $200 and did promise to return it. It is true that the Malnati deposit had been made on the sale in Eckington, but it was held and would have had to be returned to Malnati in case the sale was not closed; and it is simply an arbitrary statement on the part of Mr. Campbell associating this $200 with the Malnati deposit.

Q. On page 88 of Mr. Campbell's testimony he, testifying with respect to a discount of $600 which you got at the Second National Bank, he answers that he paid the curtails and interest excepting

$100, which he charged you with, it being, as he testified, a personal indebtedness from you to him. What is the fact about that? A. The fact is just exactly as I have just previously stated, that Mr. Campbell got the proceeds of this note that I discounted at the Second National Bank, and the $450 balance of this note was protested, and I subsequently paid it and sued Mr. Campbell for the amount as heretofore stated.

Q. Well, then, there is still due on that account, then, the amount in suit between you and Mr. Campbell? A. Yes, sir.

Q. On page 89 of Mr. Campbell's testimony, he was asked this question:

"Q. When Mr. Redman fixed the price of fifteen cents for his interest in the real estate frontage, was it before or after the railroad company commenced excavating?"

244 His answer was:

"A. The railroad had then excavated right across the track."

What is the fact as to Mr. Redman's fixing fifteen cents for his interest in any part of this land, and as to when, if at all, he did so? A. When Mr. Campbell was discussing the warehouse proposition he suggested that it would be a good plan for the proposed Washington storage—I mean terminal storage company, to buy Redman's one-third interest in the railroad frontage, and wanted to know what Redman would take for this interest. The several conversations were had on this subject, and Redman entertained this proposition which was afterwards submitted to him in writing. He was to get fifteen cents a foot, and would be released——

Q. Now, interrupting you a moment, is not that proposition to Redman—has not that been placed in evidence? A. Yes, sir.

Q. Well, then, there is no good in going into that. A. Yes, sir. From the trust upon the property, and also his part of the trust on the ten two-family apartment houses, which is set forth in an exhibit or proposed contract that I filed at some previous hearing.

Mr. RIDOUT: So much of the answer of the witness as purports to give the contents of a written instrument is objected to on that ground.

By Mr. SIDDONS:

Q. Mr. Daniel, on page 92 Mr. Campbell testified that you never claimed to him, prior to the bringing of the present suit—this suit—that the deed to him was not intended as an absolute conveyance. What is the fact about that? A. Mr. Campbell, after having gotten his contract of October 23rd, or even before that, never claimed that he had any one-third interest in the property. He well knew that such was not the case until he had carried out that contract. The only time I ever knew that he had tried to get us committed to this idea was when he submitted the agreement in July, 1903, which I promptly declined to sign, as explained in my testimony in chief.

Mr. RIDOUT: Objected to as attempting to give the legal effect of legal instruments, which speak for themselves, and, on the further

ground that the contract to which the witness refers has never been introduced.

By Mr. SIDDONS:

Q. What was that contract that you referred to that he endeavored to get you to sign, and where is it, if you know? A. It is the contract that he gave me in July, and that I took out to Woodley Inn, and compared with the contract of October 23rd, and found that it was a facsimile of that contract, with an additional line in it stating that whereas Mr. Campbell had performed his contract, he was entitled to one-third interest in the property—the Northwest Eckington Improvement Company. I took this contract back down to my office, room 11 Ames Building, and Mr. Campbell came in about ten o'clock that morning, and I told him that I could not sign that contract or advise Redman to sign it, for the reason that if we
245 did sign it that he would be released from any further responsibility of taking care of the mortgages on the houses and land, and building it up, as contemplated in the original contract of October 23d. Mr. Campbell then left the memorandum on the desk, stating the position he took, addressed to Mr. Redman and myself. He then started out of the office and got about as far as the hall, and then came back and said: "Mr. Daniel, give me that contract." I reached over in the drawer, in the left-hand side of the desk, and took it out and gave it to him, and I have never seen it since.

Q. Now, you said in July. In July of what year was that? A. 1903.

Q. At that time he had, had he not, obtained a deed of this one-third interest from the Eckington Improvement Company? A. Yes, sir.

Q. On page 93 of Mr. Campbell's testimony he was asked by his counsel why more than ten houses had not been built on the property, and he replied that they were not built because he found that you and Redman were without funds or credit—bank credit, and that for the further reason that ten houses were sufficient to carry the fixed charges on the property, and, for the further reason that the property had developed as railroad property, and that all of you considered it would be folly to build more houses. Now what is the fact about that?

Mr. RIDOUT: I want to put in an objection here, I think, once for all. Counsel for the defendant objects to the form of questions used on this examination throughout, whereby the witness on the stand is asked to give the fact about certain transactions, as if that was the final test of the accuracy of the situation. The proper question undoubtedly is, "What have you to say concerning that statement," or "What is your view concerning that statement?"

(The pending question was read to the witness by the Examiner.)

A. The fact is that Mr. Campbell had gotten the enterprise in such a condition with the carpenters and bricklayers—in fact, everybody that he had employed was coming to my office——

Mr. RIDOUT: The answer is objected to on the ground that it is manifestly hearsay.

Q. You can't testify to what anybody—any of these people said to you, Mr. Daniel, except what they might have said in Mr. Campbell's presence. A. (Continuing:) And subjected me to considerable embarrassment. On one occasion a man by the name of Horning brought in a note——

Mr. RIDOUT: Objected to on the ground that he is now about to give the conversation between him and Horning.

A. (Continuing:) Who is one of these two per cent. a month note brokers, and I then ascertained that Mr. Campbell was financially embarrassed. Most of the equities in properties that I thought he owned were owned by his brother.

Mr. RIDOUT: All this is objected to as not responsive to the
246 question asked, and an attempt to use scandalous and impertinent matter under the guise of answering an improper question.

A. (Continuing:) And, instead of our being financially weak and without bank credit, that was unquestionably his own predicament. Furthermore, the ten houses were so tied up under the loan to build them, that none of the revenue could have been used in carrying the charges on the larger mortgage.

Q. Mr. Daniel, referring to the same testimony of Mr. Campbell, had Mr. Redman and you and Mr. Campbell agreed that it would be folly to build more houses? A. We had not. It was a good undertaking, and if Mr. Campbell could have carried it out it would have been altogether satisfactory.

Q. On page 96 Mr. Campbell testifies to three suits brought by three different people, among them a suit by Knott and Mohler. I will ask you if there was any judgment in that suit, and if so who paid it? A. Yes. Knott and Mohler got a judgment before Judge Terrell against myself and Campbell and Redman, and I paid it.

Q. Mr. Daniel, at a session of testimony—the defendant's testimony—taken on March 16th—I think that is the date—on page 97, Mr. Campbell was asked by his counsel what had been done to provide for payment of the note due to Albert M. Cowell for over $700, and he stated that an order had been given for a small sum still in the hands of Mr. Cowell, says the record; that is manifestly an error—for $142.75 as a curtail, and he was further asked by his counsel that if, in addition to that $142.75, and the $500 that Mr. Daniel has, he means the $500 he supposed you had from the Malnati sale, was applied to the note. What balance did you leave on the note, and Mr. Campbell answered that it would pay all but about $51.21. What was the situation with regard to that Cowell indebtedness at the time that testimony was given, if you know, Mr. Daniel? A. The note in question was paid the day before Mr. Campbell gave this testimony, and he knew it at the time, because he signed the paper the day before the note was paid.

Q. On page 99 Mr. Campbell was asked what amount in the ag-

gregate you had borrowed from him for your personal uses. He states in reply that you had borrowed several sums of $30 and $50 and one sum of $187.50 due at the Lincoln — bank for interest which was due, and he did not seem to have the money to pay, and then he was not able, without looking at the record, to tell how much you owed him on that account at that time he was testifying. What have you to say as to that, Mr. Daniel? A. The two small amounts mentioned were paid to the Armat Motion Picture Company, and Campbell received credit at that time from the Company for the two small amounts mentioned. As to the $187.50, I will state that the note for $300 was discounted by Mr. Campbell at the Washington Savings Bank, and he received the full amount of $300, and $187 of the same was to return the like amount above mentioned, and $112.50 was to be paid by Mr. Campbell on the $300 note when it came due, and I was to pay the $187.50, which was done.

247 Q. On page 110 Mr. Campbell was being interrogated about the railroad—the development of the railroad, but he testified, in response to a question, that he did not become clear on the subject of what those railroad developments would be until 1903. I will ask you if you know when the report of the bill had been made in the Senate; whether it was made prior to 1903 or not?

Mr. RIDOUT: Objected to on the ground that the Committee report is not legislation.

A. As far back as October and November of 1901, when Mr. Campbell was with me in New York; I took the Washington Star and showed him the descriptions of the railroad; that is improvements and legislation that was going on in Congress. When I came back to Washington in the spring of 1902 I found that Mr. Campbell had kept posted and knew really more about the situation than I did, as I had not been here for some time, and because he was in Washington, I think, most of the time after the middle of December or the first of January. I did not get back until the spring.

Q. Is this a copy of the Senate report on the project? (Handing witness paper.) A. (After examining same.) Yes, sir.

Mr. SIDDONS: I offer that in evidence.

(And the same is filed by the Examiner, marked "Exhibit Rebuttal 8.")

Mr. RIDOUT: I object on the ground that it is irrelevant, and on the ground already given as the reason for objecting to the witness's testimony concerning the Committee report.

By Mr. SIDDONS:

Q. Mr. Daniel, on page 119 Mr. Campbell states that he did not himself seek to obtain a deed of the Northwest Eckington Improvement Company, from that Company to the Sanitary Dwelling Company, and that he never asked for it. What have you to say about that? A. That was the only thing that he wanted and had to have in order to do anything to get back the money that he spent in incorporating the Company and getting up a prospectus and selling

the stock, and he was the positive and active element in getting it drawn up and delivered to him.

Q. On page 122, referring to a subdivision of the Northwest Eckington Improvement Company, Mr. Campbell stated that he knew of a plat of such a division or subdivision; that he had seen it in the deeds of the Northwest Eckington Improvement Company. I will ask you if that is one of the deeds used at the time of which Mr. Campbell was speaking? (Handing witness paper.) A. (After examining same.) Yes, sir.

Mr. SIDDONS: I offer that deed with the printed plat adjoining in evidence.

(And the same is filed by the Examiner, marked "Exhibit Rebuttal 9.")

Mr. RIDOUT: I object to it on the ground that it is immaterial.

248 Q. Mr. Daniel, on page 186 of Mr. Campbell's testimony, Mr. Campbell is testifying about the architects employed for the construction of these ten houses. Who employed those *those* architects? A. Mr. Campbell employed the architects and builders.

Q. On page 196 Mr. Campbell, testifying to the moneys he had advanced prior to December 10th, 1902. Had the first loan at that time been obtained from F. H. Smith & Sons? A. Yes, sir.

Q. Is that the statement of the loan—of the first loan? (Handing witness paper.) A. (After examining same.) Yes, sir.

Q. Obtained from whom? A. The F. H. Smith Company.

Mr. SIDDONS: I offer that in evidence.

(And the same is filed by the Examiner, marked "Exhibit Rebuttal 10.")

Q. Was there a second statement, Mr. Daniel? A. Yes, sir.

Q. The second statement of the second loan I mean? A. Yes, sir.

Q. Was that obtained by the F. H. Smith Company? A. Yes, sir.

Mr. SIDDONS: I offer that in evidence, excepting the pencil memorandum, some of which I think is Mr. Campbell's handwriting, and some of it I don't know in whose handwriting it is. I don't offer the pencil memoranda.

(And the same is filed by the Examiner, marked "Exhibit Rebuttal 11.")

Q. Now, Mr. Daniel, referring to those two loans, under what circumstances was the money derived from those loans paid over to Mr. Campbell? A. As soon as the first loan was awarded Mr. Campbell got Redman and myself to sign an order on the F. H. Smith Company to pay the money over to him.

Q. Did you or Mr. Redman get any of that money? A. No, sir.

Q. Mr. Daniel, on page 219 and 220 of Mr. Campbell's testimony he was asked by me whether he had received from you on or about November 5, 1903, a refund from the District Government of $22.01, and he was unable to recall whether he had received such a sum or not. What is the fact, if you know, about the payment of the money

—the refund of that money? A. At that date Auditor Garrison sent a check to my office payable to the order of the Northwest Eckington Improvement Company. I endorsed this check and turned it over to Mr. Campbell and charged him up with it on my books at the time. It was for some refund on the deposit, I imagine, on the Rhode Island Avenue Apartment houses.

Q. In Mr. Campbell's testimony, at a point—I am not now able to put my hands upon it—I will supply it—Mr. Campbell testified that no money derived from you went to Mr. Cowell. Did you ever obtain from Mr. Cowell the statement of his account, Mr. Daniel? A. Yes, sir. I asked Mr. Cowell for a statement after we had the——

Q. Is that it? (Handing witness paper.) A. (After examining same.) Yes, sir.

249 Mr. SIDDONS: I offer it in evidence, with special reference to items under date of May 23d, June 6th and November 24th, 1903.

(And the same is filed by the Examiner, marked "Exhibit Rebuttal 12.")

Mr. RIDOUT: Objected to on the ground that it is a statement shown already by the testimony to be incorrect because it omits a credit of $450 in the aggregate, which is now conceded to be on this statement.

Mr. SIDDONS: Not conceded by the complainant.

Mr. RIDOUT: For Heaven's sake, the complainant is not going to refuse to get out of a credit of $450, I imagine. However, if he does the Court will probably make him pay it.

The WITNESS: At the time that statement was correct.

By Mr. SIDDONS:

Q. Can you tell, Mr. Daniel, when you obtained that?

A. I received this statement, as I remember it, soon after Mr. Campbell sent in his only statement, which has been filed here as an exhibit. (Referring to Complainants' Exhibit No. 7.)

NOTE.—It is stipulated by counsel for the respective parties that the prospectus of the Washington Sanitary Dwellings Company, together with the bill of McGill & Wallace of May 5th, in payment for the printing of the same, about which Mr. Campbell was cross-examined by counsel for the complainant, may here be offered in evidence.

(And the same are filed by the Examiner, marked "Exhibits Rebuttal 15 and 14," respectively.)

Mr. RIDOUT: I object to it on the ground of it being immaterial.

By Mr. SIDDONS:

Q. Beginning on page 224, Mr. Daniel, of Mr. Campbell's testimony, he states that he was willing that the remainder of the Malnati purchase money should be applied to the debts of the enterprise if they, meaning, I assume, Messrs. Redman and yourself, would pay up their share of what had already been paid, and that after that Malnati money was used up, that he proposed that each of you pay his share of the unpaid debts and liquidate them. What have you

to say about those statements of Mr. Campbell's, Mr. Daniel? A. At the time of the Malnati sale we found out that we had already been obligated on more than the real cost of the building enterprise. As a matter of fact Mr. Campbell had not paid any part of the cost of the ten lots or the cost of the ten two-family apartments, and could not have acquired a one-third interest in said property until he had paid something like five or six thousand dollars individually on this building enterprise.

Mr. RIDOUT: The answer is objected to in so far as it attempts to argue the case and give the witness his version of the relation between the parties to this controversy.

250 Q. On page 225 of Mr. Campbell's testimony he states that you refused to pay interest amounting to only three dollars on a two hundred dollar note that matured at Bell & Company's while he, Mr. Campbell, was out of the city, and that on his return to the city he liquidated it; that he paid the note and interest, and then he states that "I repaid him and the interest." What have you to say about that, Mr. Daniel? A. His statement is ridiculous, for the reason that I never have had an opportunity of paying a two or three hundred dollar note with three dollars. I remember the occurrence of the note being protested at Bell & Company's bank while Mr. Campbell was away, and neglecting to give these matters proper attention, and if he was absent I am at a loss to know how he makes a statement of that kind, that I refused to pay three dollars on it.

Mr. RIDOUT: I object to that as argumentative and not responsive.

The WITNESS (continuing): And the statement is untrue. I never declined anything of the kind.

By Mr. SIDDONS:

Q. Mr. Daniel, you heard, I believe, the testimony given by Mr. James W. Campbell, the defendant's brother in this case. I wish you would give your version of the occurrences of a conversation testified to by Mr. James W. Campbell as occurring in the fall of 1902 at the defendant's house in this city. A. The interview of October referred to by Mr. J. W. Campbell I very distinctly remember. I was called up by Mr. Charles M. Campbell to come up to his house as he desired to discuss some of the legal phases of the transfer of the Jenkins interest in patents, and he at that interview discussed this question, and so far as his statement in regard to Redman's interest being offered to him at fifteen cents, and the ratification of any paper by the Northwest Eckington Improvement Company, he is altogether off in his dates. The question of transferring the entire property of the Northwest Eckington Improvement Company to the Sanitary Dwellings Company, which was organized by Mr. Charles M. Campbell, the question was then taken up. That was in the months of May and June, as I remember, 1902, and there was no controversy on this point, for the reason that the transfer of the entire property to the Sanitary Dwellings Company, in order to give it an unquestionable title to enable Mr. Campbell to sell his stock, we found this was the proper thing to do.

Mr. RIDOUT: Objected to as argumentative and not responsive.

A. (Continuing:) And at that time I had no conversation with Judge Campbell, at that time or at any other time, on this subject.

Q. Mr. Daniel, interrupting you, had not the deed to the Sanitary Dwellings Company—the deed from the Northwest Eckington Improvement Company to the Sanitary Dwellings Company—had it not been made some months prior to this conversation with Judge Campbell? A. Several months, yes, sir.

251 Q. Was there ever a stockholders' meeting for the ratification of any deed to Mr. Campbell or to the Sanitary Dwellings Company? A. No, sir.

Mr. RIDOUT: Objected to on the ground that it is immaterial to this controversy whether such was so or not.

Q. Now there was a stockholders' meeting ratifying one of the contracts was there not, Mr. Daniel? A. Yes, sir; there was a stockholders' meeting ratifying the contract of October——

Mr. RIDOUT: Pardon me. The contents of the proceedings of the stockholders' meeting are objected to as they are in writing, and the best evidence is the minutes book.

By Mr. SIDDONS:

Q. I don't think I need inform you that you must not give the action of the stockholders' meeting. I ask you if there was a stockholders' meeting held for the purpose of ratifying any of the contracts? A. Yes, sir.

Q. Which one? A. October 23d.

Q. Was there any discussion at this meeting testified to by Mr. James W. Campbell about the purchase by him, the witness, James W. Campbell, of Mr. Redman's interest in this property? A. No, sir. The question of the Redman interest was brought up by Mr. Campbell long subsequent to this meeting at Mr. Campbell's house, at my office, 1410 Ames Building, in connection with the warehouse proposition.

Q. While you were present at that conversation between James W. Campbell and C. M. Campbell, did you hear Mr. James W. Campbell offer to lend his brother, C. M. Campbell, $10,000 to get the enterprise under way, if he needed it? A. No, sir; I did not.

Q. Was anything said in that conversation, either by Mr. C. M. Campbell or his brother, J. W. Campbell, that would have led you to think that Mr. C. M. Campbell needed $10,000 to float the proposed enterprise? A. No, sir; the question was not discussed at that meeting. It was the business of the Armat Motion Picture Company that occupied that evening talk.

Q. Mr. James W. Campbell testified that this conversation was about a contract which his brother was to execute or not, by which he was to take the management and have charge of certain property out in Eckington, he thinks it was; that some Eckington Improvement Company had owned it and the Sanitary Dwellings Company had been organized. What was the situation with the Sanitary

Dwellings Company in October, 1902, when this conversation is alleged to have taken place? A. It had been absolutely abandoned.

Q. Was Mr. Campbell interested, James W. Campbell, interested in the Armat Picture Company?

Mr. RIDOUT: Objected to as immaterial.

A. Yes, sir; Mr. J. W. Campbell represented his sister, Mrs. Williams, who had considerable stock interest in the Company. He may have had some himself.

252 Q. Mr. C. M. Campbell, did he have any interest in the Armat Picture Company?

Mr. RIDOUT: Objected to as immaterial.

A. Yes. The Campbell family represented, I think, over $200,000 worth of the stock.

Q. Mr. Daniel, when you reached the house, Mr. C. M. Campbell's house, on the occasion of this meeting with Judge Campbell, who first addressed you and stated the reason why you were wanted, if at all, if you can recollect? A. I don't recollect. I simply know that I took up one or two of the decisions of the patent office and one of the courts, and a lot of papers that Mr. Campbell wanted me to bring along with me at the time.

Q. Up to that time had Mr. C. M. Campbell informed you at all that Judge Campbell was his attorney in the matter of the Eckington enterprise, or that he was to consult him about it? A. No indeed. He always stated to me that Mr. Ridout was his attorney.

Q. Mr. Daniel, I refer to letters that have been introduced in evidence by the defendant, and introduced by Mr. Hoover at a recent session of taking testimony, and referring to the letters that appear passing between you and officers of the trust company, generally Mr. Hoover. What have you to say about those letters?

Mr. RIDOUT: Objected to as the letters speak for themselves.

Q. (Continuing:) I don't care anything about the letters that were offered in passing between Mrs. Franz and the Trust Company. A. Subsequent to June 16th, 1902, on the question of paying off the Franz trust, in order to get a new loan bearing five per cent. interest, a good deal of correspondence was had, and then I, in conversation with Mr. Campbell, who was present during the time I wrote most of these letters—the difficulty was to get a release feature in a new trust bearing five per cent., and take up the old trust. So I determined to make an effort with the trust company to get that interest on the Franz note reduced to five per cent., and still retain the release feature in order that the Sanitary Dwellings Company might carry out its plan of releasing lots and building up the property.

Q. I observe, Mr. Daniel, that 11 of these letters introduced bear date—almost all of the letters passing between you and officers of the company, bear date at a period anterior to the contract of October 23d. I think that is correct. A. Yes, sir; that is so.

Q. Excepting one of November 1st to you from Mr. Hoover, the trust officer, and one of December 17th, 1902, in which the company returns a sum of money to you and makes reference to some

promissory note that the company had previously, a few days before, delivered to you. The adjustment that you have testified to that you were endeavoring to make, reducing the interest, obtaining a new loan, were in the interest of the Sanitary Dwellings Company proposition, were they? A. Yes, sir, and it was absolutely essential to have the release feature in order to build up the property.

Q. You were not able to arrange for a reduction in the interest, were you? A. No, sir; they declined to reduce the interest,
253 and we preferred keeping that loan with the release feature to getting a five per cent. loan without the release feature.

Q. Can you tell me, Mr. Daniel, how long that Franz trust had been carried as an over-due loan as to principal, prior to the arrangement made for its definite extension to December, 1904?

Mr. RIDOUT: The question is objected to because the proof shows that it had been carried as overdue as to interest as well as to principal.

A. Over ten years.

(Without concluding the examination of the foregoing witness, at this point an adjournment was taken until tomorrow, Friday, June 16th, 1905, at 7:30 o'clock p. m.)

WASHINGTON, D. C.,
FRIDAY, *June 16th*, 1905—7:30 o'clock p. m.

Met, pursuant to adjournment.

Present: Frederick L. Siddons, Esq., of solicitors for the complainants; John Ridout, Esq., solicitor for the defendant, the parties litigant, and the Examiner.

Whereupon T. CUSHING DANIEL, having been heretofore duly sworn, resumed the stand and was further interrogated in rebuttal.

Direct examination.

By Mr. SIDDONS:

Q. Mr. Daniel, in Mr. Campbell's testimony—I can't give the page at the present moment—he stated that there was still a note outstanding payable to William Ward—W. H. Ward. What have you to say about that, and what was done with regard to the Ward indebtedness? A. The Ward note was protested at the Lincoln National Bank and I paid the note.

Q. Now did the payment of that note to Ward conclude his claim against this enterprise, Mr. Daniel? A. After paying that note the loan was negotiated on the two-family apartment houses of $1,800 to pay off a mechanic's lien that William Ward had upon these houses.

Q. That loan has not yet been paid, has it? A. No, sir.

Q. In the letter introduced by the defendant from Mr. Hoover, addressed to you, reference is made to some notes—promissory notes that the trust company had held, and which in this letter it was stated had been turned over to you a few days prior thereto. I wish you would state what those notes were—the amount. A. They were

first trust notes on a piece of improved property that had sold for $3,200. The amount of those notes were $1400. That had been left with the trust company to be credited on the Franz account.

Q. When were they left with the Trust Company, Mr. Daniel, can you say? A. They were in the hands of the trust com-
254 pany at the time that the settlement was made on June 16th, 1902, and were returned as *dated* in Mr. Hoover's letter, about December 1st, 1902.

Q. What was the condition of that Franz trust, Mr. Daniel, with respect to interest when, in 1903—December, 1893—Mr. Campbell rendered a statement of account to you?

Mr. RIDOUT: Objected to as already covered—fully covered by the previous questions to this witness.

A. The interest had been allowed to accumulate in amount about $1,800.

Q. How and when was that paid? A. That was paid out of the money received from Malnati, from the sale of the property of the Northwest Eckington Improvement Company.

Q. When Mr. Campbell made that demand for the payment of the $4,000 to him, and rendered this account to you, what was the state of the enterprise with respect to outstanding obligations as to their amount, approximately? A. Mr. Campbell had obligated us in the enterprise something over $15,000, besides the $25,000 secured upon the two-family apartment houses.

Q. Mr. Campbell stated on cross-examination, on page 156, that as to the payment of the settlement, as he called it, of the Riley note, that the aggregate of the indebtedness then outstanding was $2,000. I will first ask you, please, if the Riley note, which was subsequently merged into the judgment which Riley obtained against all three of you, whether that judgment has ever been paid?

Mr. RIDOUT: Objected to as calling for the opinion of the witness as to a question of law.

A. No, sir, it is still outstanding against us.

Q. Counting that judgment, or including that judgment, what are the outstanding obligations under the trust, I had better say, at the time Mr. Campbell was testifying, which was in the latter part or March, about March 26th or 27th? A. The outstanding obligations were $6,626, including the $1800, the William Ward judgment that was paid by a loan now upon the houses.

Q. Mr. Campbell has testified that you had refused to contribute, you and Mr. Redman had refused to contribute to curtails of maturing notes and obligations. What is the fact as to that? A. We have never declined. On the other hand, we had met with great difficulty in getting Mr. Campbell to contribute anything towards these curtails, and we tried in every way to make him do so, in order to get the $1600 back from him that he had received from the Malnati sale. Then, when he seemed to take the position that he was carrying his part of the enterprise by contributing one-third, I called the attention of our attorneys to the fact, and they wrote Mr Campbell——

Mr. RIDOUT: I object to what transpired between this gentleman and his counsel, in the absence of Mr. Campbell.

Q. You consulted your counsel, and what? A. They wrote to Mr. Campbell——

Q. Wait a moment. Don't give the contents of the letter.

255 Mr. SIDDONS: Now, Mr. Ridout, I want to offer in evidence a letter I wrote to Mr. Campbell of July the 22nd, 1904.

Mr. RIDOUT: I have no doubt it was written with your usual adroitness.

(And the same is filed by the Examiner, marked "Exhibit Rebuttal 15.")

Mr. RIDOUT: I gave you notice to produce the letters you received from Mr. Campbell in response to these.

Mr. SIDDONS: That is what I have done.

Mr. RIDOUT: Have you got them there?

Mr. SIDDONS: I suppose so. I tried to have them all there. The letter of July 22nd he never answered.

Mr. RIDOUT: I object to any letters written by Messrs. Ralston & Siddons on behalf of Mr. Daniel, on the ground that they are written *post litem motem*, and evidently intended to be and are self-serving declarations on behalf of their client.

Mr. RIDOUT (to Mr. Siddons): Do I understand you to offer Campbell's letters in reply?

Mr. SIDDONS: Oh, yes.

Mr. RIDOUT: I don't object to them, but I object to this on that ground.

Mr. SIDDONS: Mr. Examiner, these are my copies here. You can write them in. I will first offer, in connection with the testimony of Mr. Daniel, just given, the letter addressed to Mr. Campbell of July 22nd, 1904; a letter from Mr. Campbell to us of August 1st, 1904; a note from Mr. Campbell to us dated August 8th, 1904; a letter to Mr. Campbell from us, dated August 9th, 1904, and a letter from Mr. Campbell to us, dated August 14th, 1904.

(And the same are filed by the Examiner, marked "Exhibits Rebuttal 15, 16, 17, 18 and 19," respectively, and copied into the record, agreeably to the request of counsel, as follows:)

HOTEL GRAND,
OCEAN GROVE, N. J., *Aug.* 1, 1904.

Mess. Ralston & Siddons.

GENTLEMEN: The note due at the Citizens Bank on the 3d instant is for $500. Curtailed one-fourth makes $125. My third of this is $41.66. The interest is $7.50.,My third is $2.50, making in all my share $44.16, which sum I enclose to you in conformity with your practice to request me to pay through you.

Very truly yours, C. M. CAMPBELL.

JULY 22, 1904.

Charles M. Campbell, Esq., Washington, D. C.

DEAR SIR: Referring to your declination to sign the new note in favor of Cowell & Sons, we would state that we communicated the

fact to Mr. Daniel. The indebtedness is due, of course, and should be paid, and, as we view it, should be paid out of the proceeds of the sale of the Malnatti property, from which you received over $1600.00 under protest from the Northwest Eckington Improvement Company and Messrs. Daniel and Redman. If you will pay this money into the Northwestern Eckington Improvements Company, so much thereof as is necessary to pay Messrs. Cowell & Sons will be used for that purpose, and the remainder used to discharge the obligations assumed in and about the improvements in Northwest Eckington, and we request you to do this.

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We trust that you will agree to this arrangement promptly, so that Messrs. Cowell & Sons will not be kept waiting unnecessarily.

Truly yours, ——— ———.

S-L.

Mess. Ralston & Siddons.

GENTLEMEN: As I do not know the face of the note per enclosed notice, I have assumed that it is close to $1140, and have consequently provided for a curtail of $300, for which I enclose my one-third, $100.

Very truly yours, C. M. CAMPBELL.

Hotel Grand, Ocean Grove, N. J., Aug. 8, 1904.

AUGUST 9, 1904.

Charles M. Campbell, Esq., Ocean Grove, N. J.

DEAR SIR: Your note of the 8th instant, enclosing bank notice of the note maturing on the 16th instant for $1159.00, and your check for $100.00 in favor of the Citizens National Bank, received, and its receipt communicated to Mr. Daniel. Mr. Daniel has also today received notice of protest as endorser of the note made in favor of Rudolph West & Company on May 10th, maturing ninety days after date. This incident brings up again the question which was the subject matter of a letter from us to you, dated July 22nd last and to which we never received a response. That letter was as follows:—

"Referring to your declination to sign the new note in favor of Cowell & Sons, we would state that we communicated the fact to Mr. Daniel. The indebtedness is due, of course, and should be paid, and, as we view it, should be paid out of the proceeds of the sale of the Malnatti property, from which you received over $1600.00 under protest from the Northwest Eckington Improvement Company and Messrs. Daniel & Redman. If you will pay this money into the Northwest Eckington Improvement Company, so much thereof as is necessary to pay Messrs. Cowell & Sons will be used for that purpose, and the remainder used to discharge the obligations assumed in and about the improvements in Northwest Eckington, and we request you to do this.

"We trust you will agree to this arrangement promptly, so that Messrs. Cowell & Sons will not be kept waiting unnecessarily."

You have evidently been contributing to curtails on various notes given in and about the building operations in Northwest Eckington upon the theory that your obligation in that regard was to the extent of one-third only of such obligations. This, of course, is not and never has been admitted by either Messrs. Daniel or Redman or the Northwest Eckington Improvement Company, but as
257 these gentlemen were liable as endorsers in many cases and in others as joint makers on this paper, they have, in protection of their individual credit, advanced money to take care of these obligations as they matured. As we wrote you under date of July 22nd, Messrs. Daniel and Redman believe that the money that you received under their protest from the proceeds of the sale of the land to Malnatti, should be devoted to the payment of the obligations incurred in and about the building enterprise. Messrs. Daniel and Redman, on behalf of themselves and the Northwest Eckington Improvement Company, have been using the money that the Company received from the Malnatti sale for this purpose, and they are unwilling to further endorse or make notes to meet obligations maturing, at least while the amount received by you from the Malnatti sale referred to remains unapplied to the purposes indicated.

Please take notice, therefore, that the note maturing on the 16th of August and the overdue note in favor of Rudolph West & Company, which has been protested, must be protected by you, or the holders thereof will no doubt take such steps as may be necessary for the protection of their interests.

We return herewith your check for $100.00 sent in your letter of the 8th instant, together with notice from the Citizens National Bank of the forthcoming maturity of the note mentioned therein.

Truly yours, ——— ———.

S-L.

Enclosures.

"PROSPECT HOUSE,
CAPE PORPOISE, MAINE, *Aug.* 14, 1904.

Mess. Ralston & Siddons, Washington, D. C.

DEAR SIRS: In answer to yours returning my share of curtail on Campbell, Daniel & Redman note due this week at Citizens Bank, I wish to say that the proposition therein about returning money, &c., is declined. I am ready to take care of my share of any paper that is out, either by paying or renewing, and am ready to pay my share of any money due, not covered by notes. Please note my change of address.

Yours very truly, C. M. CAMPBELL."

By Mr. SIDDONS:

Q. Now, Mr. Daniel, after Mr. Campbell received from the first Malnati sale $1600, how much has he paid, if you can tell, on account of curtails of notes or on account of the obligations of this enterprise? A. About six or seven hundred dollars.

Cross-examination.

By Mr. RIDOUT:

Q. Mr. Daniel, on page 184 of your rebuttal testimony, you were asked a question as to the testimony previously given by Mr.
258 Campbell concerning the execution—the preparation in your office October, 1902, of the contract of October 23rd, 1902, and you evaded the question, and the only answer you made was this: "At that time I had no office in Washington. I rented my office on June 1st, 1903." What was your business October 23rd—during the month of October, 1902? A. I was then with the Armat Motion Picture Company, if I remember.

Q. Where did you spend your business hours? A. Well, part of my time I was in the office of the Company, 627 E Street.

Q. And you had a desk there, did you not? A. Not at the time that Mr. Campbell presented the contract that I am testifying about.

Q. When did you first put your desk in that office? A. I can't recall. We were first down to the Star Building. Then we moved up to 627 E Street.

Q. Did you have a desk in the office of the Star Building? A. Yes, sir.

Q. Well, what did you do with the desk—was it moved from the Star Building to the E Street building? A. It was.

Q. Where was the office of the company October 23rd, 1902, during the month of October, 1902?

A. At 627 E Street.

Q. Then the desk and your other office furniture went from the Star Building to E Street, did it not? A. That I don't remember. I know that I rented an office in the Ames Building, as I have testified, in June, and I looked up the correspondence, and the first month's payment was——

Q. I want to ascertain where you spent your business hours during the month of October, 1902. A. Well, sir, I was part of the time on the road chasing infringers of the Armat——

Q. While you were in Washington during that month? A. I testified very positively that I was at the office.

Q. Was it not your office? A. No, sir, it was the Armat Picture Company's office.

Q. Where was your business mail received? A. Received at that point.

Q. Where was the place where you transacted your business during the day? A. At the office of the Armat Motion Picture Company, 627 E Street.

Q. Now will you swear that at the time mentioned by Mr. Campbell, he did not at that office of the Armat Picture Company, thus used by you, prepare this contract in your presence? A. Which contract are you referring to?

A. October 23rd, 1902, in respect to which you gave the evasive answer that you had no office in Washington.

Mr. SIDDONS: I object to counsel's characterization of the witness's answer. It was not evasive.

A. I stated it was not my office, and in no sense was it my office.

Q. Will you swear that on the occasion testified by Campbell he did not have a conversation with you at the Armat Picture Company's office, and that you then did not prepare the contract
259 which he says you did prepare at your office? A. I unquestionably did not prepare it at that time, nor did Mr. Campbell prepare it at that office. He brought it to that office.

Q. When? A. I can't remember the date, but some time a little before, I have no doubt, it was executed.

Q. No doubt it was executed where? A. The papers will show. I can't recall.

Q. The paper won't show where it was executed. I ask you where it was executed? A. Well, I cannot tell you.

Q. Who was the typewriter employed by the Armat Picture Company at that time? A. I don't recall. It was either a Miss Norment or Miss Scott. We had two at different times I was there.

Q. Was not that contract written in your presence by one of those ladies? A. I don't remember such to have been the case at all.

Q. Do you say it is not so? A. I don't remember anything about that. I know Mr. Campbell, to my best recollection, brought the contract into the office himself.

Q. You won't say that it was not written by one of those ladies while you and Mr. Campbell were both in the office, will you? A. It is too long ago for a man who has any regard for his veracity to make any positive statement about it.

Q. Referring to the $2,000 not discounted at the Citizens Bank you stated in your examination that, with the exception of the mistake in the date, all your testimony concerning that note was absolutely correct. Part of your testimony concerning that note was that the proceeds were used in paying the expenses or obligations of the Northwest Eckington Improvement Company. Do you adhere to that statement? A. I adhere to that statement, and I never would have endorsed the note but for its being helpful to Mr. Campbell in that direction. He told me that he was temporarily embarrassed, and that he would have some money he would get in from a sale of property in Joplin pretty soon and he would fix it up all right.

Q. Do you adhere to your statement that Mr. Moore was then an officer of that bank? A. I am glad you asked me the question, because I would like to be very accurate. I went into the Citizens National Bank with Mr. Campbell, went to the extreme end over to the passage way; I turned to the left and went in the office and Mr. Campbell introduced me to a Mr. Johnson, and Mr. Johnson called up Mr. —— a red headed man, I think his name was Olds, and Campbell stated, "Now, this is Mr. Daniel. I refer you to Glover as to his responsibility; he is a cousin of Senator Daniel's and I want to know if you won't discount this $2000 note if I get him to endorse it." And they turned to me and stated, either the cashier or Johnson or Moore, I don't know which—didn't know the gentlemen at that time at all; the first time I had ever been in the bank; and it made a great deal of an impression on me, because I

did not like the use of any such references and would not have consented to them if I had known he was going to mention them.

Q. Do you still adhere to the statement that you made in the former examination, that the Cashier was Mr. Moore? A. I
260 would not swear to that, but my impression when I gave the testimony was that Mr. Moore was there, and that impression may have been brought about by the renewal, at the time I went to have the note renewed, as Mr. Campbell renewerd the note and asked me to endorse it again, and then Mr. Moore was unquestionably there because I had a conversation with him.

Q. At what office was the trust company letters which have been offered in evidence here received by you? A. I don't know. The letters on file will show the address.

Q. Haven't you any memory about it? A. I received some of them at the office of the Armat Company, and some at 1410 G street, probably, but I am not certain.

Q. When did you commence business in this city. A. I commenced business in this city fifteen years ago.

Q. Well, to come down to the year, beginning with the year 1902, where did you transact business—where did you have your business place? A. I really had no particular place, because I was working for the Armat Motion Picture Company. I was at once time in Brooklyn and in New York, and I was on the road very often looking after these infringers.

Q. Working for that company, as you were, was not your office, so far as you had one in Washington, at that company's office? A. No, when I was at the St. George Hotel in Brooklyn——

Q. I say when you were in this City? A. Oh, yes, part of the time.

Q. What other place did you use as your office when you were in Washington, except the Armat Company's office? A. I have stated that the Armat Company opened up at the Star Building and I went there with them, and after they were there sometime they moved up to 627 E street, and from that point I went over to Brooklyn, and was in New York through the fall of 1901 and up to the spring of 1902.

Q. Then you came back to Washington? A. Then, I came back to Washington and was at the office 627 E street; about there frequently.

Q. Were you not there daily a good deal of each day when you were in the city? A. I can't recall that. I have no objection to telling you the facts about it, but I want to be correct about it.

Q. You cannot give any more definite testimony than you have stated? A. No.

Q. You spoke of the price of the Sternburg houses as being $2400 each. Did you include the price of the land in that estimate? A. I am not certain about that. The price stated that they were to cost $2400, I don't remember whether that included the price of the land or not.

Q. Did they cost that, each row of houses? A. Those that we looked at were the same. They were all alike.

Q. I want to know what your information is as to the cost. Did you say they all cost $2400, each row? A. The ones that we made the special inquiry about, on Bates street, near Eckington,
261 were the only ones, in fact, I remember taking any interest in in looking at. Those were the only ones I had in view.

Q. Now, you say these cost $2400 each? A. Yes, sir.

Q. Mr. Daniel, you testified at our last session, I think it was, in substance that, concerning the financial condition of the parties interested in this enterprise, the reverse of Mr. Campbell's testimony was the fact, that he was the financially weak member of the enterprise, and that you were in good financial condition. To what period did you refer when you made that statement?

Mr. SIDDONS: Counsel for the complainants objects to the mode of examination. He is undertaking to state what the witness testified about from memory, and I shall object to this line of examination unless the language used by the witness in his testimony is quoted to him. I am not willing that the memory of counsel should be used in place of the language of the witness.

Mr. RIDOUT: Counsel is not responsible for being unable to have the written testimony before him. If the testimony of the witness—if the cross-examination of the witness had taken place immediately upon his testimony being given there would have been no written testimony to refer to. The witness knows whether I correctly quote him, and if it shall appear when the testimony is written out that I have misquoted him it will operate to the disadvantage of my client.

(The pending question was read to the witness by the Examiner.)

A. I refer to the time just before the completion of the second row of five two-family apartments, then coming along up to ten days before the closing of the sale to Malnati, at which time Mr. Campbell came out one Sunday to Woodley Inn and said that he had made a sight draft on his brother in Joplin for about $700 and that he had a letter——

Mr. RIDOUT: I object to this voluntary statement. It is not responsive.

Mr. SIDDONS (to the witness): Finish your answer, Mr. Daniel.

A. And that his brother had declined to honor the draft, and it would be back in Washington the next day, and he had to do something to protect it; that he was out of money and that he would—I told him that it was impossible for him to get anything out of the Malnati purchase as the time for closing it had not arrived. He then said that he would get Jake Lee, over in Georgetown, to exchange checks with him in order that he might protect that protested draft, and in that conversation he convinced me pretty thoroughly that he was financially embarrassed, and then the frequent calls from builders and material men for their money confirmed me in my conclusions.

Q. Now, as near as you can give it, what date was that? You can certainly give the month?

Mr. SIDDONS (to Mr. Ridout): Date of what?

Mr. RIDOUT: The Sunday when he says Campbell called at Woodley Inn.

262 A. Ten days before. You can refer there to the closing of the Malnati sale.

Q. Ten days before that? A. Yes, sir.

Q. At that time your financial condition was much better than you found Campbell's to be? A. Up to the time I endorsed notes for Mr. Campbell I never had a note protested in this town.

Q. Well, I would like a specific answer. You assert, as I understand it, that at the date I have mentioned, and during the period covered by your last answer, your financial condition was much better than Campbell's? A. I don't think there is any question about that.

Q. Well, will you categorically answer yes or no? A. I will state that at that time I was not embarrassed in any way.

Q. Will you please give me a categorical answer. Were you in better financial condition during that period concerning which you have just testified than Campbell? A. I believe so, because Mr. William Walker who had been employed by the two Campbells to settle up some differences on these properties here in Washington, not only told me——

Mr. RIDOUT: I object to what Mr. Walker said. Mr. Walker's remarks are not competent here, and I am sure Mr. Siddons will agree with me about that.

A. (Continuing:) That most of the equities of Mr. Campbell in property Mr. Campbell had in his name was owned by his brother.

Mr. RIDOUT: That is objected to for the same reason as on the occasion when that statement was made, that the land records are the best evidence, and it is not responsive.

Q. Now, beginning at the beginning of this period, you say that at a certain period, near the completion of the second row of houses, where did you keep your bank account?

Mr. SIDDONS: I object to the question as impertinent and improper and unwarranted by the cross-examination, and I advise the witness that he is not obliged to answer the question unless he wishes to do so.

A. I respectfully decline.

Q. What balance did you have in bank at that time?

Mr. SIDDONS: Same objection

A. I decline to answer that.

Q. What real estate did you own?

Mr. SIDDONS: The question is objected to for the same reasons.

A. I owned the Woodley Inn property that I had been offered $25,000.00 for; I owned a very large interest in this Eckington syndicate, and some personal property that I don't think the counsel has——

Mr. SIDDONS: The counsel didn't ask you about personal property.

263 Mr. RIDOUT: I am going to ask him about it. He may as well answer it now.

The WITNESS: I simply decline to answer questions on any such interrogation.

Q. What was the amount of the incumbrance on the Woodley Inn property at that time? A. At that time it was $10,000.00, and it pays me five per cent. on $30,000.00 net.

Q. I understood you to say in advance that you would decline to answer any questions about the extent of your holdings of personal property?

Mr. SIDDONS: One moment. If counsel for the defendant wishes to ask the witness any questions let him frame them and the witness can then answer them or not.

(The pending question was read to the witness by the Examiner.)

By Mr. RIDOUT:

Q. Do you adhere to that intention?

Mr. SIDDONS: Question objected to for the same reason.

Mr. RIDOUT: Well, the witness ought to say something about it. Either refuse to answer it or answer it. What does he do?

The WITNESS: Under the advice of counsel, he declines to make any further answer to this line of interrogation.

By Mr. RIDOUT:

Q. During this period of which I have spoken you negotiated several small loans from Mr. Campbell, did you not?

Mr. SIDDONS: Question objected to as having already been covered in the previous examination of the witness.

A. I think not. I think Mr. Campbell was getting the money from me at that time, and would have gotten more if I had not stated to him positively that, until he accounted for the expense of these buildings and showed the disposition of the cash that I would not advance any more money.

Q. Will you assert or do you assert that you never obtained small loans from Campbell during the progress of this enterprise, dating it back to, say, about the first of October, 1902, and coming down to a comparatively recent date—coming down, at any rate, to immediately prior to the bringing of this suit? A. I stated in my testimony in regard to $187.50. That was immediately returned to Mr. Campbell by the discount of a $300 note at the Savings Bank, and, with this exception, I haven't any recollection of borrowing any money of Mr. Campbell, although he charges me some that the Armat Motion Picture Company credited him with.

Q. You are positive, now, that you never borrowed but $187.50 from him the whole period of your entire acquaintance—is that your testimony? A. I don't remember ever having any other transaction of that kind with Mr. Campbell.

Q. The only loan you ever obtained from him was $187.50? A. I don't remember any other, and that was instantly paid, as I have stated. It was not really a loan.

Q. Well, you are acquainted with Mrs. Franz, the holder
264 of the incumbrance on the Northwest Eckington property, of course? A. Yes.

Q. You have had frequent conversations with her concerning the property there and the indebtedness due to her? A. Well, at considerable intervals I have.

Q. Did you ever discuss with her the question as to its condition as to taxes?

Mr. SIDDONS: Objected to as not proper cross-examination. No such inquiry was ever hinted at on the examination in chief. The question is further objected to as not fixing time or place of conversation with this lady.

Mr. RIDOUT: This witness is a party to the case, and it is not necessary.

A. I think most of Mrs. Franz's conversations on the question of interest was in writing with Mr. Hoover.

(The question last asked the witness was read to him by the Examiner.)

A. My recollection is that Mrs. Franz saw this notice of that tax sale that I have mentioned in my testimony, when we redeemed the property, and on that occasion I explained to her that there were some taxes due on the property, but we had sold a great many lots in the property and the tax office declined to separate the taxe- and charge them to these different owners of property in the subdivision, and that they had charged them al- to the Eckington Improvement Company, and that as soon as we could get those bills separated and take advantage of the Act of Congress that saved us the penalties due on these taxes, that they would be settled up.

Q. She came to see you or communicated with you about that matter, did she not, when she saw this advertisement? A. I think she told me about it. I am not certain.

Q. Had you not previous to that told her that the taxes were all squared up, or words to that effect? A. No. My impression is that she knew the situation all the time.

Q. You are positive about that? A. I am not positive about anything that happened so long ago. What date do you refer to?

Q. I refer to the time when—my question to you is had you not, shortly prior to that, stated in effect to Mrs. Franz that the property was practically free of taxes? A. I have no recollection. I told Mrs. Franz that it was redeemed from the tax sale.

Q. I am talking about a time shortly prior to that, and my question is did you not assure her in substance that the property was safe on the subject of taxes? A. I might have assured her that they were perfectly safe, because they were.

Q. Did you not tell her that the taxes had been paid? A. Not that I remember.

Q. Well, will you state that you did not do it? A. I have stated all that I can say about it.

Q. That is all you are willing to say? A. Yes, sir.

Q. You presented a statement here—one of the items on the Cowell statement, which you offered as a part of your examination at the last session, and it is under the date of June 6, 1903, I 265 suppose it is; note of Redman and Daniel $500. Did you pay that note? A. I think I paid that note, but it was reduced to $450, as I remember. I am not accurate about it. It may be $500. I paid it.

Q. Were you not reimbursed? A. I was up to the balance that I am now suing for, as testified to in the same session.

Q. In other words, you got all of it back except $100? A. Yes.

Q. Then under date of May 23, there is a check of Mr. Daniel's, $150. You were reimbursed for that, were you not? A. I can't recall that. My brother keeps the books and I can look it up and find it for you if you want me to.

Q. Your testimony indicated, as I understood it, that you claimed that you had paid that money and it had never been repaid to you. I would like your memory now about it. Do you say you never were reimbursed?

Mr. SIDDONS: I object to the question because he didn't so testify in my recollection.

Mr. RIDOUT: Very well, it will condemn me, then, when it is read.

Mr. SIDDONS: I have no objection to the witness answering

Q. (Continuing:) You remember substantially what you testified to yesterday, do you not? A. Yes, sir, but that is not in yesterday's testimony, is it?

Q. Well, you remember substantially what you testified to in connection with the Cowell account, do you not? A. My brother testified to a great deal of that account.

Q. You testified very recently when this paper was offered? A. Well, refer to the testimony and see what it was.

Q. Of course, I labor under the difficulty; the testimony is not written out. I refer to the testimony so recently taken that it has not been yet written out, and I ask you if you remember the substance of your testimony on that occasion concerning the Cowell statement which you produced? A. My best recollection is that no reference was made to $150 in that testimony.

Q. Well, now, I am asking you for your recollection, assuming that nothing has as yet been said about it by you. Referring to this item of May 23, $150 check of Mr. Daniel's, what is your recollection as to whether you have ever been reimbursed the amount of that check? A. All that was thoroughly thrashed over and the checks and the data were all here before the Examiner, and I will not answer any questions that you segregate and fire at me at this meeting, because I have no means of refreshing my memory about it.

Q. Then, I understand that to mean that you do not remember distinctly about that at this time? A. No, sir, I do not distinguish

that check from the others I have mentioned in the previous testimony.

Q. Then, was the check of $200 under date of November 24th, I suppose the same year—that was taken out of what was known as the Malnati money, was it not? A. No, sir. Mr. Campbell has tried to make it so appear. He simply borrowed $200 to be returned with another check, and he has not done it. He said he wanted to pay it to Cowell, as I remember.

266 Q. Did you have any money in bank, other than the Malnati money, at that time—that Malnati $500? A. Well I should imagine I had.

Q. Well, that is not answering my question. I would like you to say whether that $200 did not, as a matter of fact, come out of the Malnati money? A. No, sir, it did not.

Q. What bank did you draw that check on, do you remember? A. Mr. Campbell ought to know it. He received the check.

Mr. RIDOUT (to defendant Campbell): Have you got that check?

The Defendant CAMPBELL: Yes, Second National Bank. (Producing check.)

By Mr. RIDOUT:

Q. I show you a check dated May 25, 1903, signed by C. M. Campbell for $150, drawn to the order of T. C. Daniel and A. M. Cowell, and ask you if that did not repay the $150 for which credit is given in this statement—this Cowell statement? A. I am not responsible for Mr. Cowell's statement——

Mr. SIDDONS: One moment. Let me object. I object to the whole line of this examination, as it was not testified to—no questions were asked of Mr. Daniel as to whether the money was returned or not to him. The testimony, and all it goes to prove, was that Mr. Daniel contributed to Mr. Campbell on Cowell's account so much money.

Mr. RIDOUT: Then, I am entitled under a ruling which has recently been made in another case that you are aware of, having asked the question as to whether he contributed certain money, and he having stated that he did by presenting this written paper, I am entitled to cross-examine him and show that he did not, in point of fact, because he got that back.

Mr. SIDDONS: I have no objection to that, but I only object to the line of cross-examination, as it is not proper, but I do not care.

By Mr. RIDOUT:

Q. Then, I ask you this general question: How much money did you pay Cowell out of your own funds which has not been reimbursed to you? A. paid the checks to Mr. Campbell or to Mr. Cowell by the request of Mr. Campbell, when he was present, and I know nothing about the bookkeeping between Mr. Campbell and Mr. Cowell.

Q. Did I understand you to say that you did not know how much money you personally contributed to pay Cowell which has not been repaid to you? A. I have nothing to say on that subject beyond the

testimony I have already given in regard to these same checks, and my own testimony.

Q. Have you at this time any definite knowledge concerning the state of your account with the Northwest Eckington enterprise in respect of any money you may have paid to Cowell, which has not been returned to you? A. I went over all that very carefully with my brother, who is an expert bookkeeper, and I testified conclusively on that subject, and I am not responsible for Mr. Cowell's statement upon which you are interrogating me now.

267 Q. Quite apart, now, from Mr. Cowell's statement, I will ask you for your independent recollection. At this moment, what is your best recollection as to the sum of money which this enterprise owes you, if any, for payments made by you for its benefit to Cowell? A. So far as I can remember, the statement there of Mr. Cowell's is correct, but I can't vouch for it.

Q. This statement of Cowell's shows an aggregate payment by you of $850. Now, how much of that debt has not been repaid to you? A. I have already testified that $450 was returned by a suit through Ralston and Siddons. Mr. Campbell paid $350, and there is a suit pending for the $100.

Q. Now, will you say that you have not been repaid the $150? A. No, I will not. I don't know whether he returned it or not.

Q. You testified that you paid $100 to Knott and Mohler. Isn't it a fact that you refused to pay a curtail, or to pay your one-third of that indebtedness when requested by Mr. Campbell to do so? A. We gave an order on Mr. Cull for the amount of——

Q. If you will just answer my question categorically, and then proceed with your explanation. A. I prefer to do it in the other way.

Q. I am entitled to it, as a matter of law; to have you answer yes or no, and then proceed with your explanation. Mr. Siddons will tell you that, I think.

Mr. SIDDONS (to the witness): I think that is right, Mr. Daniel. Answer it yes or no, and then you have the right to make any explanation you wish.

(The pending question was read to the witness by the Examiner.)

A. I have no recollection of declining, and I have no recollection of Mr. Campbell expecting me at that time to pay any one-third of Knott and Mohler's account, but they had threatened to sue Mr. Campbell on a protested note for the amount. I then gave an order on Mr. Cull for the full amount of this note, he having funds of the Northwest Eckington Improvement Company, and Mr. Campbell flatly declined to sign the order. Knott and Mohler sued on the note before Justice Terrell, got a judgment and I paid the note in full with the charges.

Q. Did not Mr. Campbell offer to pay you one-third of that Knott and Mohler obligation? A. I have no recollection of Mr. Campbell doing anything of the kind, because he was not on speaking terms at that time, so far as I remember.

Q. Well, isn't it a rule—was it not the rule that Mr. Campbell offered, in respect of all these cases, to pay one-third if you and Mr.

Redman would each pay the other third? A. He was obligated——

Q. Now, just say yes or no and then go on with your explanation, which is a great deal simpler and a great deal more intelligible, and I am entitled to it, and Mr. Siddons will tell you so.

Mr. RIDOUT (to the examiner): Just read him the question and see if I can get an answer according to Hoyle.

(The pending question was read to the witness by the Examiner.)

268 A. No, sir, there was no rule in connection with it. We found that Mr. Campbell had obligated us for over $15000 on these open accounts, and I came to the conclusion that whenever we could get any money out of him, a third curtail, or any other way, that we had better get it; and he had in his hands at that time that I refer to, when Knott and Mohler presented this protested note, about $1600.00 belonging to the Northwest Eckington Improvement Company from the sale of their ground.

Mr. RIDOUT: Answer objected to as wholly irresponsive.

Q. Was it not true at the same time that the Northwest Eckington Company owned twice as much of the proceeds of that sale as Campbell owned, or you and Redman owned it? A. The Northwest Eckington Improvement Company was entitled to all of it, and the contractors and builders had the right to have their bills paid.

Q. Kindly answer my question. Of the $4000 did not you and Mr. Redman receive two-thirds and Mr. Campbell the other—did you and Mr. Redman together, representing the Northwest Eckington Improvement Company, not receive twice as much out of the Malnati sale as Mr. Campbell received? A. No, sir. Mr. Redman did not receive anything, and it was placed to the credit and use of the Northwest Eckington Improvement Company, in paying off the bills that Mr. Campbell had contracted on these houses, every dollar of it.

Q. Then, whatever was received personally you got. You say Mr. Redman got none of it? A. It was the money of the Northwest Eckington Improvement Company.

Q. Mr. Daniel, that is not an answer to my question. The proceeds of the Malnati sale which came into the hands of yourself and Mr. Redman, I understood you to say that Mr. Redman received no benefit from it, and my question is you did receive whatever benefit was personally received from that money? A. Mr. Redman consented to my disbursing the money for the payment of these bills that Mr. Campbell had contracted.

Q. And none of it was used for any other purpose? A. No, sir.

Q. What was the original indebtedness to Ward, you referred to as having paid one of the notes? A. As I remember that, Ward mechanics' lien was something like $1700, and his note at the bank that I took up I think was in the neighborhood of $300, as well as I remember it.

Q. You testified about an hour ago that it was about $150., which is correct? A. I testified to what?

Q. That it was $150 note? A. Well, then, you took it down wrong. It is nearly $300, I remember.

Q. Well, you say now that you paid $300 for the Ward note at the Lincoln Bank? A. Yes, nearly three hundred dollars; I can't remember.

Q. And you have never been repaid any of it? A. No, sir.

Q. Now, was this subsequent to the suit brought? A. Oh, long afterwards.

Q. Subsequent to the suit brought? A. Yes, sir.

269 Q. You spoke of the R. W. Smith note for $1400, was the face value of those notes? A. Yes, sir.

Q. The trust company only collected something like $240, as I understand your answer? A. $248, including the interest, and $1400 on the notes.

Q. The $248 was returned to you, was it not? A. Yes, sir.

Q. And the $1400 in notes was also returned to you? A. Yes, sir.

Q. So that no part of the proceeds of the Smith note ever went to pay Mrs. Franz anything, did they? A. Yes, sir.

Q. How do you explain that? A. The notes were originally $2,200.

Q. You put the whole $2,200 in the bank? A. Yes, sir.

Q. And of that $800 was used to pay the Franz obligation? A. Yes, sir.

Q. That was before Mr. Campbell came into the situation in any way? A. I don't know; I think so.

Q. Sometime prior, was it not? A. That I don't recall.

Q. Well, of the remaining $1400 in notes, no part went to the Franz transaction, did it? A. So far as the notes were paid the money was used in the carrying of the whole property, and the taking care of the interest.

Q. You had $2000. in Smith notes? A. No, I had $1400.

Q. I thought you said you deposited $2200 with the bank. A. Originally.

Q. Originally you had $2200 is that correct? A. Yes.

Q. You got $248 of money from the bank, and you got how much in notes? A. $1400.

Q. Making a total of $1640 of principal? A. $48 of that was interest.

Q. You mean $1600 altogether? A. That's right.

Q. So that $600 out of that sum was paid on account of the Franz trust? A. Yes.

Q. And that was paid before Mr. Campbell had anything to do with this situation? A. I think so.

Mr. RIDOUT: That is all, Mr. Siddons.

Mr. SIDDONS: I don't know that there is any redirect, but I am not going to admit anything until I see this testimony written out.

——— ———.

Subscribed before me this — day of ——, 1905.

——— ———, *Examiner.*

Thereupon JOHN O. JOHNSON, called as a witness on the part of the complainants in rebuttal and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. SIDDONS:

Q. State your residence and occupation, Mr. Johnson? A. Residence 1408 Binney street; office 1410 G street; occupation real estate.

270 Q. Mr. Johnson, were you ever connected with what was known as the Sanitary Dwellings Company? A. I was.

Q. In what capacity? A. I was one of the directors, and acted as secretary for a while.

Q. As such have you the possession of the minute book of the company? A. I have.

Q. I wish you would turn to the minutes of the company on or about April 9th, 1902, as I remember, and state if there appears on the record there any action taken by the company on the proposition to acquire property belonging to the North West Eckington Improvement Company?

Mr. RIDOUT: Objected to as *as* the minutes are the best evidence, if admissible.

Q. (Continuing:) I just want to know yes or no if there is action of that kind so recorded. A. There is action.

Mr. SIDDONS: Now, I offer so much of the minutes of the Sanitary Dwellings Company of April 9th, 1902, as shows the action of the company taken.

Mr. RIDOUT: I object to this on the ground, first, that this witness is not competent to prove these minutes, as he is not secretary, and not authenticated by him; in the second place because what they purport to show is immaterial to this controversy.

(The minutes referred to are here copied into the record pursuant to the request of counsel, as follows:)

"Adjourned meeting of the directors of the Washington Sanitary Dwellings Company, held at the office, 1423 New York Avenue, Washington, D. C., on the 9th day of April, 1902, at 2 o'clock p. m. Present, Thos. R. Riley, James H. Wood, John S. Swormstedt, T. Franklin Schneider, John O. Johnson and Charles M. Campbell. A quorum being present, Vice Pres't Riley occupied the chair, and Secretary Wood the Secretary's desk. A proposition to sell to the company a certain tract of land was presented, whereupon the following motion in writing was offered, and adopted by unanimous vote, except C. M. Campbell, who was present but did not vote, because of his interest in said proposition.

The following is the *contract:*

'WASHINGTON, D. C., *April 7th,* 1902.

Received of C. M. Campbell a deposit of five hundred dollars, to be applied as part payment on the purchase of lot 35, Metropolis

View, Washington, D. C., containing 457,380 square feet more or less. Price of property thirty five cents per square foot. Two thirds of said price is to be paid in the capital stock of the Washington Sanitary Dwellings Company at par. Each certificate of said stock is to carry notice to the effect that the stock is to be non-participating in the dividends of said company for a period of three years from April 7th, 1902, and is to be voted by the President, Vice President and Secretary of the company, or a majority thereof, at all regular or special meetings of the stockhollders of said com-
271 pany until April 7th, 1905. The remainder of said purchase price is to be paid in installments as the capital stock of said company is sold, seventy-five per cent. of said receipts to be reserved by said company until all liens found against said property are liquidated; the remainder of said receipts to be applied to the cash payment required to secure the property.

As soon as the liens are disposed of, then ninety (90) per cent. of the receipts are to be applied to the purchase price of the land, until one-third of said purchase price has been paid.

The deposit to be refunded unless a good title is given. Conveyancing at cost of purchaser. Purchaser is required to make a full settlement in accordance with the terms of sale within 15 days, or the deposit will be forfeited. In the event of forfeiture the purchaser shall not be relieved of his responsibility to comply with terms of sale.

NORTHWEST ECKINGTON IMPROVEMENT COMPANY,
By S. C. REDMAN, *President.*'

In the back of said contract is written:

'I, C. M. Campbell, hereby assign the within contract to the Washington Sanitary Dwellings Company for value received of said company. Given this 9th of April, 1902. C. M. Campbell.'

On motion the meeting then adjourned.

THOS. R. RILEY, *Vice-Pres't.*
T. F. SCHNEIDER, *Secretary.*

The motion referred to on page 19 of the preceding minutes was inadvertently omitted by the copyist: It was as follows:

'Moved by J. H. Wood and seconded by T. F. Schneider that the contract of Northwest Eckington Improvement Company with C. M. Campbell, and assigned to this company by said C. M. Campbell, be and the same is hereby accepted, with the proviso that the deferred payments shall be paid on or before the end of twelve months from this date.'

THOS. R. RILEY, *Vice-Pres'd't.* J. H. WOOD, *Sec't'y.*

By Mr. SIDDONS:

Q. Mr. Johnson, when the Sanitary Dwellings Company abandoned its operations, who was acting secretary of the company? A. Mr. Schneider was secretary.

Q. Yes. I notice, though, on January 12, 1903, you appear as secretary of the meeting. A. Yes. I suppose Mr. Schneider was not present.

Q. This is signed here Riley, Schneider, Campbell, Swormstedt, and you appear as secretary of the meeting. A. Yes.

Q. How did you come into the possession of this book?

Mr. RIDOUT: Is this for the record, Mr. Siddons?

Mr. SIDDONS: Yes, sir; since you made a technical ob-
272 jection.

The WITNESS: This is all my handwriting, except that, (indicating) I acted as clerk from the beginning.

Q. You were a director? A. Yes.

Q. Who kept the books? A. I kept them.

Q. In whose handwriting is this record of January 12, 1903, on page 23 of the record? A. I could not swear to that now; I could only give a guess. It looks like Mr. Campbell's writing.

Q. Have you ever seen him write? A. I have seen him write. I could not swear to that, but it looks so to me.

The Defendant CAMPBELL (after looking at writing referred to): Yes, that's my writing.

Mr. RIDOUT (to the defendant Campbell): Why, don't you wait; let yourself be called. If that is your handwriting let him call you and prove it.

The Defendant CAMPBELL: No, let's see——

By Mr. SIDDONS:

Q. Mr. Johnson, the record that has been offered in evidence, beginning on Page 79, in whose handwriting is that, sir? A. That is mine.

Q. That is yours? A. Yes, sir.

Q. The omitted motion referred to on page 21, in whose handwriting is that? A. That is mine.

Q. You acted as clerk for the board? A. I did that as an accommondation for the secretary.

Q. Referring to this record, on page 21, in which the words, "The motion referred to on page 19 of the preceding minutes was inadvertently omitted by the copyist. It was as follows: Then follows the motion. A. I was the copyist.

Q. You were the copyist and you wrote that motion. You made that record up on page 21, and it was signed by Mr. Riley and Mr. Wood? A. Yes.

Q. Can you tell me, Mr. Johnson, who submitted the proposition mentioned in the minutes on page 19 to the board?

Mr. RIDOUT: Objected to because the best evidence is the minutes.

A. I don't know positively, but think that I myself presented it.

Q. Where did you get it from? A. From Mr. Campbell.

Q. Mr. Johnson, did you have any connection at any time with a sale of stock—sale of the stock of the Sanitary Dwellings Company? A. I undertook to become an agent to sell it but didn't sell any.

Q. Was the undertaking in writing? A. No.
Q. Was there any contract made with respect to the sale of the stock? A. Yes.
Q. Was that in writing? A. No; it was in type; typewriting.
Q. With whom? A. With Mr. Campbell.
Q. Is that the contract? (Handing witness paper.) A. (After examining same.) Yes.

273 Q. Who approached you, if any one, on the subject of going into that project, Mr. Johnson?

Mr. RIDOUT: Objected to as the contract merges every antecedent negotiation.

A. Mr. Campbell and I made this.
Q. I say who broached the subject to you? A. Oh, Mr. Campbell.
Q. After that contract was made, Mr. Johnson, did you and Mr. Campbell ever confer together regarding the sale of the stock? A. We did.
Q. Did Mr. Campbell ever make any suggestions to you regarding that sale of the stock? A. Yes.
Q. Did he ever suggest your going to see any particular person or persons as possible purchasers of the stock? A. Well, that's a good while ago. I think he did some few persons.
Q. Did you succeed in selling any of the stock? A. No, I did not.
Q. Can you tell me who prepared this contract? A. No, sir.
Q. Under what circumstances did you first see it? A. Just as it is there.
Q. But who presented it to you—showed it to you? A. Mr. Campbell.
Q. And when he showed it to you it was in this form? A. Yes. I think we had conversations about it before that, Mr. Siddons.
Q. Then, as I understand you, Mr. Campbell brought it to you prepared in this form? A. Yes.
Q. And it was agreed upon and executed by both of you? A. Yes.

Mr. SIDDONS: I offer that in evidence.
(And the same is filed by the Examiner, marked Exhibit Rebuttal 20.)

Mr. RIDOUT: Objected to on the ground that it is irrevelant to this controversy.

The WITNESS: That was strictly in line of the business in which I was interested at that time.

Q. Mr. Johnson, do you know if Mr. T. F. Schneider, at one time Secretary of the Sanitary Dwellings Company, is in town or not? A. He was last week. I spoke to him a few days ago.
Q. Do you know whether he is in town now or not? A. No, I do not.
Q. Do you know if J. H. Wood is in town? A. He was two days ago; I saw him.

Cross-examination.

By Mr. RIDOUT:

Q. Before you entered upon the enterprise of selling this stock, what investigation did you make as to the desirability of the enterprise? A. I went out and saw the ground, though I had been perfectly familiar with it for a long time.

Q. Well, what conclusion did you reach as to the desirabil-
274 ity of the enterprise of building that class of houses in that locality? A. I was certain that that was the place to build sanitary dwellings, outside of the closed quarters of the city.

Q. What efforts did Mr. Campbell make, within your knowledge, to promote the enterprise? A. He was very industrious; so was I. The fact is I dropped all other business for two or three months.

Redirect examination.

By Mr. SIDDONS:

Q. But all those efforts resulted in failure, didn't they, Mr. Johnson? A. Failure on the part of the Washington Sanitary Dwellings Company. The directors would not subscribe themselves, and we could not sell to others without the directors taking stock.

Q. So that, despite Mr. Campbell's great industry—— A. (Interposing.) He proved it by his works. He gave me a subscription.

Q. But, despite his industry, the enterprise was a failure? A. Yes.

——————.

Subscribed before me this — day of ——, 1905.

——————.

Mr. SIDDONS: Mr. Ridout, except that I may wish to ask Mr. Daniel something on redirect in response to this cross-examination of yours, and except that I am going to offer in evidence, and would like you to stipulate that it may be filed as soon as I obtain it, subject, of course, to objection as to its competency, materiality, and so forth, of the statement from the trust company showing the total amount that has been paid on the property—on the Franz trust since its existence, my case in rebuttal is closed.

Mr. RIDOUT: Yes, I shall have a little surrebuttal, but not very much. That statement, of course, can be presented at any time, and the objection can be made when it is offered.

(At this point an adjournment was taken until Tuesday, June 20, 1905, at 7.30 o'clock p. m.)

TUESDAY, *June 20th*, 1905—7.30 o'clock p. m.

Met, pursuant to adjournment.

Present: Frederick L. Siddons, Esq., of Solicitors for the complainants; John Ridout, Esq., Solicitor for the defendant, and the complainant T. Cushing Daniel in proper person.

Whereupon T. CUSHING DANIEL resumed the stand and was further interrogated.

Redirect examination.

By Mr. SIDDONS:

Q. Mr. Daniel, on page 218 of your cross-examination, in the middle of the page, you made this statement: "At the time of the Malnati sale we found out that we had already been obligated on more than the real cost of the building enterprise. As a matter of
275 fact Mr. Campbell had not paid any part of the cost of the ten lots or the cost of the ten two-family apartments, and could not have acquired a one-third interest in said property until he had paid something like five or six thousand dollars individually on this building enterprise." What did you mean by that?

Mr. RIDOUT: Objected to as the witness having testified fully, it is too late for him to edit his testimony.

A. It was to combat the reasonableness of Mr. Campbell making any such demand as our paying any part of the outstanding obligations that he had incurred on these two family apartment houses, and, applying the statement simply to the ten two family apartment houses, I meant to say that he would have to have paid five or six thousand dollars before he could have gotten the right to make any such demand even to a claim to the one-third interest in these ten two-family apartments.

Q. Supposing that he had paid five or six thousand dollars in those outstanding obligations referred to, would he then have been entitled to a one-third interest in this property?

Mr. RIDOUT: Objected to because calling for an opinion on a question of law.

A. No, sir, I had no intention of conveying any such intimation.

Q. On page 236 of your cross-examination, Mr. Daniel, Mr. Ridout was interrogating you as to the office at which you occupied at times a desk when the contract of October 23, 1902 was prepared, and he asked you whether at that time you had a desk at the office of the Armat Moving Picture Company, at 627 E street, and you answered: "No, sir, not at the time that Mr. Campbell presented the contract that I am testifying about." What contract did you refer to? A. I thought we had gotten off the question of the contract of October 23, which I had already admitted had been signed about the time that I had the desk in the office of the Armat Motion Picture Company, and then thought he referred to the agreement that Campbell presented in July, 1903, at 1410 G street.

Mr. SIDDONS: Now, counsel offers in evidence a statement of the National Safe Deposit Savings and Trust Company showing the account that has been paid upon what has been referred to in these proceedings as the Franz trust, in interest and principal.

(And the same is filed by the Examiner, marked Exhibit Rebuttal 21.)

Mr. RIDOUT: I object to it as immaterial.

Q. Now, Mr. Daniel, in addition to the amount shown by this statement of the trust company of what has been paid upon the trust of principal and interest, what further sums have been paid upon the property?

Mr. RIDOUT: Objected to as immaterial and not re-direct.

A. $12,500.00 in cash at the time the ground was purchased, and $4,700.00 in grading and improvements about a year after.

276 Mr. SIDDONS: Now, Mr. Ridout, I think, unless I shall want to go into that itemized statement, and, frankly, I don't believe I will—the itemized statement of these obligations—barring that, and the fact that we may find that, on both sides, we have not responded to all calls made upon us—I want to be sure about it—I am through.

Recross-examination.

By Mr. RIDOUT:

Q. Mr. Daniel, on page 184 you were asked concerning the place where the contract of October 23, 1902, was prepared, and Mr. Campbell's testimony was brought to your attention, and you were asked what is the fact about that, that you were present when he prepared it, and your answer was at that time I had no office in Washington. I rented my office on June 1, 1903." When you made that answer did you not understand that you were testifying in respect to the contract of October 23, 1902? A. I did, but my answer was simply to combat Mr. Campbell's statement that it was my office.

Q. I ask you now where the contract—where you say the contract of October 23, 1902 was prepared? A. My recollection of it was that Mr. Campbell brought it down to the office at the Armat Motion Picture Company, 627 E street, where I had a desk, and used that desk whenever I was in the city, but I have no recollection of Mr. Campbell's writing it in the office, or my having had anything to do with the writing of it.

Q. Will you say that you were not present when it was prepared in that office? A. No, I would not say it positively under oath, because it may have been so. My idea is that it was not.

Q. In this statement of the trust company of the total payments on account of the Franz trust, how much of said payments was provided for by the sale of the property to Malnati? A. I have already testified to this. I think it is $7,000, as well as I can remember.

Q. And how much was provided by the sales of the two parcels of land on which the ten houses were built? A. About $4,700.

Mr. RIDOUT: That is all, Mr. Siddons, unless something occurs to me after this is written out, which I don't expect.

——— ———.

Subscribed before me this — day of ———, 1905.

——— ———.

FRIDAY, *June 23rd*, 1905—7.30 o'clock p. m.

Met, pursuant to agreement of counsel, at the same place, on Friday, June 23rd, 1905 at 7.30 o'clock p. m.

Present: Same counsel.

Whereupon T. CUSHING DANIEL resumed the stand for further redirect examination.

By Mr. SIDDONS:

Q. On page 228 of the testimony in rebuttal, Mr. Daniel you stated that Mr. Campbell had obligated the enterprise some-
277 thing over $15,000, besides the $25,000 secured upon the two family apartment houses. Are you able to state more definitely what that amount is?

Mr. RIDOUT: Objected to on the ground that it is not rebuttal and immaterial.

A. Yes, sir. It amounted to $16,173.94, including the balance of a renewal note that I had endorsed for Mr. Campbell at the Citizens National Bank of $1,400.

Q. And that was the amount of the note at the time the obligations footed up the amount you just stated? A. Yes, sir.

—— ——.

Subscribed and sworn to before me this — day of ——, A. D., 1905.

—— ——,

Examiner in Chancery.

WASHINGTON, D. C., *July 14th*, 1905—
Friday, at 3 o'clock p. m.

Met, pursuant to notice, to take further testimony on the part of the complainants in the above entitled cause.

Present: Frederick L. Siddons, Esq., of Solicitors for the complainants; John Ridout, Esq., Solicitor for the defendant, and the parties litigant.

Whereupon SIDNEY T. THOMAS, called as a witness on the part of the complainants, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. SIDDONS:

Q. Your name is Sidney T. Thomas, I believe? A. Yes.

Q. Long a practitioner of the bar of this District? A. No, not so awfully long.

Q. How long? A. Oh for many years; twenty-five years.

Q. And you were formerly, I believe, attorney for the District of Columbia? A. Well, yes, I believe so.

Q. And, Mr. Thomas, did you represent Mr. Thomas R. Riley in an action at law that he instituted, or caused to be instituted,

against Mr. Charles M. Campbell, T. C. Daniel and S. C. Redman? A. Yes, sir.

Q. After that case had proceeded to judgment did you ever have a call from Mr. Charles M. Campbell? A. Yes, several of them, after that. In response, however, to letters and requests from me to see him, and to see about paying that judgment.

Q. During any one or more of those calls upon you, Mr. Thomas, did Mr. Campbell make any statements to you regarding your ability to enforce the judgment against him?

Mr. RIDOUT: Objected to as immaterial.

278 A. Well, he thought it could not be enforced against him.

Q. And what reason did he give?

Mr. RIDOUT: Same objection.

A. I don't remember just now. I think he said he didn't own the property; his wife owned it, or somebody.

Q. Did he say anything to you about his brother owning all the property that might stand in his name? A. He said something about his brother in connection with his property. I don't remember now just what he did say about it.

Q. Well, did he say anything about the furniture in his house belonging to some one other than himself?

Mr. RIDOUT. Same objection.

A. My recollection is he said that belonged to his wife.

Q. Did he tell you in effect or in substance, if not in so many words, that he was execution proof?

Mr. RIDOUT: Same objection, and further objected to that the question is leading.

A. He seemed to think the judgment could not be made out of him, and that I might as well go after some one else.

Q. Who else? A. Mr. Daniel, for instance.

Q. Did he suggest Mr. Daniel? A. I think he did.

Q. Sir? A. I think he did.

Q. Can you not say—tell us any more definitely than you have, Mr. Thomas, as to what he said with respect to any real estate in this District standing in his name?

Mr. RIDOUT: Objected to as cross-examination of the complainants' witness.

A. Well, I understood from Mr. Campbell that he had no real estate in this District that a judgment could be made out of; that is, he thought so.

Q. What reason did he give for so thinking? A. Well, I don't know exactly. He said his brother owned it.

Cross-examination.

By Mr. RIDOUT:

Q. Mr. Thomas, isn't it a fact that Mr. Campbell repeatedly called on you and expressed his willingness to pay one-third of this judgment? A. Yes.

Q. Didn't he give you his check for $1004.67 as his one-third? A. Yes, payable on condition, however.

Q. Payable on the condition that the other people paid theirs? A. Yes.

Q. You held it for some time, didn't you? A. Yes.

Q. And was not his conversation with you always to the effect that if these other parties would pay their parts he would pay his? A. Yes.

279 Q. In these conversations with Mr. Campbell, did you at any time tell him that Mr. Daniel had repeatedly promised to pay his part of it? A. Yes, I think I told Mr. Campbell that.

Q. Didn't you also tell him that Mr. Daniel had never paid anything, and had never kept his promise? A. Yes.

Q. And that is a fact, isn't it? A. No; Mr. Daniel never paid me anything or never offered to pay me. He always complained that—Mr. Daniel's contention was—which was a different one from Mr. Campbell's—he contended he ought not to pay as much as Mr. Campbell thought he ought to pay.

Q. He claimed that his liability was not as great? A. Yes, that was his idea.

Q. Now, how did you finally get the money for the Riley judgment? A. I finally prepared a bill against Mr. Daniel and Mr. Campbell both, including Redman, against what I supposed were equitable interests of Mr. Campbell in real estate on Columbia Heights, and Mr. Daniel's interests out Northwest on the Tennallytown road, and when I was about to file that Mr.—I was notified by Mr. Siddons, I think, or Ralston and Siddons that they had a party who would take up the judgment.

Q. Who was that party? A. I think it was a man named Chapin.

Q. How were you paid for that judgment—by whose check? A. Now, I don't know whether that was Mr. Chapin's check, or whether it was Ralston and Siddons' check. I think it was Ralston and Siddons' check and I had the judgment entered to the use of Chapin. It was Ralston and Siddons' check.

Q. Do you know anything more about the history of it than the fact that Ralston and Siddons gave you that check, and you transferred it to Chapin at their direction? A. No, that is all I know about it.

The WITNESS (to Mr. Siddons): I want to be correct about that check. Was not that your check? I don't recall. I think it is very likely correct.

Mr. SIDDONS: Let me interpose an objection and a motion to strike out so much of the foregoing questions put to Mr. Thomas as relates to the sale and assignment by Riley of the judgment in question to Mr. Chapin as not proper cross-examination, or in any degree responsive to the examination in chief.

NOTE BY THE EXAMINER.—The witness Thomas was at this point excused and, after leaving the room, returned and requested the Examiner to read to him his testimony just given. The Examiner

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did so, and the witness Thomas thereupon requested that the answer appearing at the top of page 276, to wit:

"A. He seemed to think the judgment could not be made out of him, and that I might as well go after some one else."

be changed to read:

A. He seemed to think the judgment could not be made out of him *except by a proceeding in equity, to get at his equitable interests*, and that I might as well go after some one else.

The witness desired the Examiner to note also that, instead of the answer numbered 6 on the same page, to wit:

280 "A. Well, I don't know exactly. He said his brother owned it."

he desired the same changed to read:

A. Well, I don't know exactly; *he said his brother had an interest in it.*

By Mr. SIDDONS:

Q. Mr. Thomas, how did you happen to make this amendment to your testimony? A. Well, on leaving the room Mr. Campbell called my attention to it, and on reflection I think that the amendment is due to Mr. Campbell; that my original statement is a little too strong.

Q. Now, taking, then, your testimony as amended, what did Mr. Campbell say to you about his brother owning the real estate in this District? A. Oh, he said his brother had some interest in his real estate but it was standing in his name, or something of that sort.

Q. Then, do I understand you to say that the impression that you have was that Mr. Campbell told you the judgment could be made out of him? A. No, the idea of Mr. Campbell was that it could be made easier out of Mr. Daniel; that I would have less trouble.

Q. No, I am not speaking about Mr. Daniel. I am speaking about Mr. Campbell. I shall have to ask you to give me as near as may be, Mr. Thomas, what Mr. Campbell said to you when he told you that he didn't own the furniture in his house, and that his brother owned an interest, as you now state, in the real estate. Did Mr. Campbell tell you, in any one of those conversations, that he had real estate from which you could collect that judgment in any way? A. Well, he didn't tell me that he had any, or point out any.

Q. Did he encourage you to think that he had any? A. No, I don't know that he did. He encouraged me to think that I could make this judgment easier out of Daniel.

Q. I understand. I am sure he did. Were not the whole of his statements to you in respect to the making of that judgment of a character to discourage any attempt on your part to make it out of him? A. Well, he didn't want me to proceed against him.

Mr. SIDDONS: That hardly answers the question.

(The pending question was read to the witness by the Examiner.)

A. Well, in what sense do you mean "discouraged?"

Q. Since it would either be impossible or very difficult to find anything belonging to him out of which you could collect the judgment in any way? A. Well, his idea seemed to be that it would

be a more difficult thing—a more tedious or difficult thing to get it out of him than it would out of Daniel. And then he had an idea that Daniel and Redman ought to pay two-thirds of it, and he was willing to pay his one-third, and put up his check at one time and left it with me for a while; that he would rather I would proceed against them.

Q. Is it a fact or not that the representations and statements made by Mr. Campbell to you tended to create in your mind the
281 impression that he had no property in the District out of which a judgment could be collected? A. No, because I believed otherwise.

Q. Well, irrespective of your belief otherwise based upon other knowledge, I am speaking of the statements made by Mr. Campbell to you? A. No, I can't say that Mr. Campbell gave me to understand that he had no property that I could make it out of.

Q. You didn't think that his statement to you that the furniture in the house did not belong to him—— A. (Interposing.) Well, I didn't care anything about the furniture. I was satisfied with his equities in the Columbia Heights property.

Q. He didn't tell you of any? A. No, I looked them up myself.

By Mr. RIDOUT:

Q. You prepared a bill, I understood you to say, against Campbell, Daniel and Redman. A. Yes.

Q. In which you included the property standing in Campbell's name? A. That is some of it; I didn't include all. I included that that stood in his individual name. He had interests in other property, as I understood, but I didn't care to complicate my case with that and left it out.

Q. If the other parties to that judgment had complied with Campbell's suggestion and each paid a one-third, you would have used Campbell's check and there would have been no occasion for any suit?

Mr. SIDDONS: Question objected to as purely argumentative and not a question at all.

A. I suppose that goes without saying.

By Mr. SIDDONS: You never filed any bill in Equity, Mr. Thomas? A. No; I got notice from you and it was not necessary.

Q. And this check that Mr. Ridout has interrogated you about, did you ever cash it? A. It was turned over to Mr. Riley and he put it in his bank and it turned out all right.

Q. No, I am talking about Mr. Campbell's check? A. No, no. That check had a string to it. It was payable only on the condition that the two other men put up a like amount.

Q. It was for one-third of this judgment? A. One-third of the amount of the bill of Mr. Riley's and the interest.

Q. Was it certified? A. No.

Q. What was it that Mr. Campbell said to you, Mr. Thomas, which made you come back and correct your testimony? A. Why, he said he thought I did him an injustice in saying that he was, or in effect in saying that he was execution proof; that he didn't say that, and

he reminded me of some things that refreshed my memory a little on the subject.

Q. And then it was that you came back to amend your testimony? A. Yes, sir; I didn't want to do Mr. Campbell an injustice at all.

S. T. THOMAS.

Subscribed before me this 18th day of October, 1905.

J. ARTHUR LYNHAM, *Examiner.*

282 Mr. SIDDONS: There is one correction I want to make; at least, to be perfectly frank, I can't say that it is a correction. It is due to a little mix up in my own mind in framing a question and it is on page 64 of the complainants' testimony, and I am sure Mr. Campbell will agree as to the facts. I was interrogating Mr. Daniel as to the revenue from those ten houses that they had built, and I put this question:

"Q. Mr. Daniel, isn't it a fact that the revenue from these houses has already reduced the first loan—the first building loan that was obtained by some $900," and the answer was:

"A. Yes, sir, as I remember it is over $1000."

Now, as a matter of fact, at that time the revenue from those ten houses was slightly over $1900. Mr. Campbell must know that; he is familiar with it.

Mr. RIDOUT: You mean that it had reduced the first trust something like $1900?

Mr. SIDDONS: Yes; that is to say it had been collected and applied from time to time.

Mr. RIDOUT: What is the amount?

Mr. SIDDONS: We have paid $900 on account of the principal of the loan secured on the houses on the south side of Rhode Island Avenue, and have paid out $185 for the papering of said houses. We have paid $1000 on the principal of the loan secured on the north side houses, and have paid out $237.50 for papering. So that there will be not $1900, but about in round numbers between $1500 and $1600 to be applied to the first trust. That, however, was last spring. $1900 net, and I want to make that clear, that is all.

Mr. RIDOUT: I consent on the record that Mr. Daniel's testimony may read $1900.

Mr. RIDOUT: Mr. Siddons, I want to enlighten a question that I asked Mr. Campbell. I can do it more conveniently at this time, because it would save having another session, and Mr. Campbell can pay Mr. Lynham's charges just the same.

Mr. SIDDONS: Very well.

Thereupon CHARLES M. CAMPBELL, having been heretofore duly sworn, resumed the stand and was further interrogated.

Direct examination.

By Mr. RIDOUT:

Q. On page 54 of your testimony in surrebuttal you were asked this question:

"Q. When did you compose your differences?" and your answer was:

"A. The proposition was made and accepted over a year ago."

Now, to what controversies did that answer relate? A. The matter about lot 2 and the lot on Princeton street referred to in the preceding statement.

Q. Are there other unsettled controversies between you and Judge Campbell at this time? A. Yes.

283 Cross-examination.

By Mr. SIDDONS:

Q. Relating to other property, Mr. Campbell? A. Judge Campbell and I bought a large amount of property in Washington on joint account, the title being in me and he taking a contract to show that he held a one-half interest. The property was carried for over ten years, and questions of interest and compensation in looking after the property arose, and about that one point we had some differences; all friendly differences, however, except in this one case referred to.

Q. My question was, Mr. Campbell, whether the unsettled—— A. (Interposing.) I did not finish my answer.

(The last answer of the witness was read by the Examiner.)

Q. Have you finished your answer, sir? A. Yes.

Q. Now, my question was whether or not the question of differences that I understood you to just now testify were unsettled between your brother and yourself were unsettled at the present time—whether they related to other property than that specified by you in your answer to Mr. Ridout? A. Yes.

Q. They do relate to other property? A. They include the entire list of purchases.

Q. Of land in the District of Columbia? A. Yes.

Q. So that, besides the two lots which you specified just now and on a previous occasion, there is other property in the District standing in your name in which your brother had this interest? A. I have explained that in my previous answer. It embraced all the property standing in my name, of course, in which he held a joint interest, but did not include property that belonged to me individually. I do not mean to imply by my previous answers that I did not hold a great deal of property in my own name that belonged to me in which he had no interest.

Q. I do not believe you have specified at any time in your testimony, have you, what property you individually owned, or what property you and your brother owned jointly, except as to these two lots, lot 2 and some other property, I don't remember the number?

Mr. RIDOUT: The question is objected to as not a question; it is simply asking the witness as to what he has testified.

A. No, sir.

CHARLES M. CAMPBELL.

Subscribed before me this 24th day of October, 1905.

J. ARTHUR LYNHAM, *Examiner.*

284 EXHIBIT REBUTTAL No. 1.

Northwest Eckington Improvement Company in Agreement with Aaron Smith.

That for and in consideration of the following services viz: the general care over all the land, the cutting of weeds and grass on the parkings, on 5th, 6th W and Albany Sts. and R. I. Ave., at least three times each session. Cultivation and pruning of any trees planted on the company's land.

The said Aaron Smith is to have sole control of and right to cut or graze (with stock securely tied) the grass on said land, and to re-seed as may be necessary, until the land is sold.

This agreement good until Dec. 1st, 1902, unless mutually revoked.

T. C. DANIEL, *Sec.*
AARON SMITH.

Sept. 14/99.

Memorandum.

Exhibit Rebuttal No. 2 omitted by Stipulation of counsel.

Memorandum of Contents of Deed and Certificate of Title, Offered by Complainants in Rebuttal in Lieu of Deed and Certificate on Page 183, as per Stipulation. Filed March 19th, 1906.

Northwest Eckington Improvement Company to Washington Sanitary Dwellings Company.

Deed in Fee, Dated Ap'l 26, 1902; Acknowledged Ap'l 26, 1902; Conveys Land in Controversy.

Certificate of title of the Columbia Title Insurance Company, dated June 7, 1902, covering land in controversy, & showing the title to be good in Northwest Eckington Improvement Company, subject to deed of trust from T. C. Daniel to trustees dated July 28, 1891 & recorded in the District of Columbia land records July 30, 1891, in Liber 1608, folio 29, given to secure Jacob Franz $37,500.00/100 purchase money.

EXHIBIT REBUTTAL No. 5.

This agreement, made this — day of October, A. D. 1903, by and between Samuel C. Redman, party of the first part, and T. Cushing Daniel and Charles M. Campbell, parties of the second party, all of the District of Columbia:

Whereas, the parties hereto are the members of an incorporated syndicate known as the Northwest Eckington Improvement
285 Company, owning a certain tract of land in the District of Columbia described as "Northwest Eckington" and contain-

ing ten and one-half (10½) acres, more or less, each of the parties hereto owning an interest in said Company:

And whereas, the parties hereto of the second part are desirous of purchasing the interest of the said party of the first part in a certain portion of the above mentioned real estate, being that portion thereof fronting for a distance of eight hundred (800) feet, more or less, on the Metropolitan Branch of the Baltimore and Ohio Railroad by an average depth of two hundred (200) feet, more or less, and containing one hundred and sixty thousand (160,000) square feet of ground, more or less, the same being more particularly described in a plat of said ground appended hereto and made part hereof.

And whereas, all the real estate of the said Northwest Eckington Improvement Company is subject to certain incumbrances of record, and there are also certain moneys necessary to be expended in the completion of certain buildings now being constructed upon said property:

Now, therefore, the parties hereto of the first and second parts have agreed as follows:

First. The party of the first part, in consideration of the sum of Ten Dollars to him in hand paid, and for the further consideration hereinafter expressed, has agreed to sell, and does hereby sell, assign and transfer to the said parties of the second part, their heirs and assigns, all his right, title and interest in and to the above mentioned eight hundred (800) feet by the average depth of two hundred (200) feet of the real estate of said Company at — per square foot, and agrees, at any time hereafter, to make conveyance of his interest therein as the said parties of the second part, their heirs or assigns, may in writing direct.

Second. And in consideration thereof, the parties of the second part have agreed, and do hereby agree, to assume and discharge all and every obligation now existing against the property of said Company, including any and all amounts secured by deed or deeds of trust on said property and any amount necessary to be expended in completion of the buildings now in process of construction on said property, the intent and purpose of this agreement being, that as between the parties hereto, their heirs, executors, administrators or assigns, all and every said obligation or indebtedness now existing against the property of said Company shall be chargeable against the interests therein of said parties of the second part, and no part thereof against the interests therein of said party of the first part; and that should the said party of the first part, or his interest in said Company, be subjected to any liability in respect of the existing indebtedness of the said Company he shall be reimbursed therefor by the said parties of the second part.

If the parties of the second part fail to carry out the provisions of this agreement and meet the outstanding obligations upon the property this contract shall be null and void.

Third. It is expressly understood and agreed by the respective parties hereto that only the interest of the said party of the
286 first part in the parcel of land fronting eight hundred (800) feet on the Metropolitan Branch of the Baltimore and Ohio

Railroad by an average depth of two hundred (200) feet, as indicated on the annexed plat, is transferred or intended to be transferred hereby; and that the interest of said party of the first part in the residue of the property of said Company is wholly unaffected hereby, save and except that, as provided by paragraph numbered "Second" hereof, his said interest is released and discharged from any and all liability in respect of the existing indebtedness against said property or that may be incurred in completing the buildings now under construction — said property.

Fourth. To the faithful performance of this agreement the parties hereto, respectively, bind themselves, their —s, executors, administrators and assigns.

In testimony whereof, the parties hereto have set their hands and affixed their seals the day and year first above written.

Memorandum.

Exhibits Rebuttal Nos. 6, 7, 8 and 9 omitted by Stipulation of Counsel.

EXHIBIT "A"

EXHIBIT REBUTTAL No. 10.

WASHINGTON, D. C., *Dec. 4th*, 1902.

T. C. Daniel, C. M. Campbell & S. E. Redman
In account with
The F. H. Smith Company,

Insurance, Rents Collected, Estates Managed, Loans Negotiated, Investments. — Bond Building, 1408 New York Avenue. Successors to { F. H. Smith & Sons, Organized 1876. / Latimer & Nesbit, Organized 1893.

Name.	House.	Date paid to.	Charges.	Rent.
By am't of Loan—N. Side R. I. Ave., N. E.				2500.00
To Cheque to Campbell & Daniel			2250 00	
" Appraisement			5 00	
" Commission			125 00	
" Preparation Deed of Trust			5 00	
" " Bond			5 00	
" Notary fee			1 00	
" Recording			6 50	
" Certificate & Preparation 2 deeds			75 00	
" Recording Deed & Release			1 75	
" Ck. C. M. Campbell			25 75	
			2500 00	2500.00

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1902.

Dec. 3.	1st Payment		2500 00
26.	2d "		3000 00
Feb. 13.	3d "		2500 00
Mar. 25.	4th "		2000 00
May 26.	5th "		2500 00
			12500 00

EXHIBIT "B."

EXHIBIT REBUTTAL No. 11.

WASHINGTON, D. C., *May 15th*, 1903.

T. C. Daniel, C. M. Campbell & S. E. Redman,
In account with
The F. H. Smith Company,

Insurance, Rents collected, Estates managed, Loans negotiated, Investments.

Bond Building, 1408 New York Avenue, Successors to { F. H. Smith & Sons, Organized 1876. / Latimer & Nesbit, Organized 1893.

Name.	House.	Date paid to.	Charges.	Rent.
Loan S. Side—Rhode Island Ave., N. E.				
1903.				
Apr. 2.	By Cash proceeds of loan 1st Payment			2500 00
May 15.	" " from C. M. Campbell			400 00
	To Nat'l Safe Dep. S. & T. Co.		2519 04	
	" Ck—Collector of Taxes		193 65	
	" Appraisement		5 00	
	" Commissions @ 1%		125 00	
	" Preparation Deed of Trust, Power of Att'y & Mechanics' Lien		10 00	
	" Recording		4 75	
	" Certificate & prep. papers		35 00	
	" Recording Release		1 00	
	" Notary fee		2 00	
	" Tax Certificate		50	
	" Ck. C. M. Campbell		4 06	
			2900 00	2900 00
Apr. 1.	1st Payment		2500 00	
6.	2d "		3000 00	
May 13.	3d "		2500 00	
June 4.	4th "		2000 00	
Sep. 14.	5th "		1000 00	
" 28.	6th "		1000 00	
Oct. 26th.	7th "		500 00	
			12500 00	

288 EXHIBIT REBUTTAL No. 12.

WASHINGTON, D. C., *Dec.* 27, 1903.

North East Eckington Improving Co. to A. M. Cowell & Sons.

1902.			Dr.
Dec. 22.	To bid on No. one job.....	4373 00	
Mar. 15.	" " " " two "	4373 00	
" 15.	" 260 M brick @ 1.50 per M.....	390 00	
May 27.	" extra in cellar 65 M @ $18.00/100	1170 00	
" 27.	" 57 angle irons @ $1.00/100 each	57 00	
		10363 00	10363 00

Credits.

Jan. 3.	By Check of C. M. Campbell.....	200 00	
" 10.	" " " " " "	200 00	
" 17.	" " " " " "	200 00	
" 24.	" " " " " "	300 00	
" 31.	" " " " " "	250 00	
Feb. 8.	" " " " " "	400 00	
" 14.	" " " " " "	1175 00	
" 21.	" " " " " "	300 00	
Apr. 4.	" " " " " "	450 00	
" 11.	" " " " " "	400 00	
" 17.	" " " " " "	400 00	
" 24.	" " " " " "	450 00	
May 1.	" " " " " "	500 00	
" 8.	" " " " " "	450 00	
" 15.	" " " " " Check to Ford, $300.00..	600 00	
" 23.	" " " " " " Mr. Daniels.	150 00	
Jun. 6.	" " of C. M. C. to Ford.....	1000 00	
" 6.	" note of Redman & Daniels...	500 00	
Nov. 2.	" Check of C. M. Campbell.....	80 00	
" 24.	" " " Daniels.....	200 00	
		8205 00	8205 00
	Balance due.....	2158 00	

Memoranda.

For Exhibit Rebuttal No. 13 see Stipulation of Counsel.
For Exhibit Rebuttal No. 14, omitted by Stipulation of Counsel.
For Exhibits Rebuttal Nos. 15, 16, 17, 18 and 19 see pages 529, 530, 530, 531 and 533 of this record.

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EXHIBIT REBUTTAL No. 20.

Memorandum of Agreement Between Chas. M. Campbell and John O. Johnson.

Whereas said Campbell has secured the option on ten and a half acres more or less of ground in Northwest Eckington, the ground being known as lot #35 Metropolis View, D. C., and whereas said Campbell desires to transfer the title to said ground to a company organized to build sanitary houses for the laboring classes, the owners of the ground to take a one third of their price for the ground in cash and two thirds in the stock of the Company; and whereas the enterprise has now reached the stage for the incorporation of the Company and the election of its officers, this step to be followed by the sale of the Company's stock; and whereas the services of said Johnson are desired in connection with the enterprise in every way in which he can be useful, particularly in the organization of the Company and taking over of its land, all said work to meet the approval of said Campbell, and it being agreed that said Johnson is to make no similar connection in any other direction and to render faithful and continuous service in behalf of this enterprise until it is successfully carried through.

It is here*with* agreed between said parties that for said services, said Johnson is to receive two and one half per cent. of the total selling price of said property and in addition five per cent. on fifty thousand dollars of the stock belonging to the owners of the property, to be paid as it is sold. The two and a half per cent, specified above is not to be paid until the owners have received two thirds of the cash coming to them in the deal.

Signed in duplicate this 20th day of March, 1902.

CHARLES M. CAMPBELL.

Witness:

JOHN O. JOHNSON.

EXHIBIT REBUTTAL No. 21.

The National Safe Deposit Savings and Trust Company of the District of Columbia.

Capital, $1,000,000.

Thomas R. Jones, President; E. Francis Riggs, Vice-President; William D. Hoover, Second Vice-President and Trust Officer; George Howard, Treasurer; Charles E. Nyman, Secretary; Frank W. Stone, Assistant Treasurer.

WASHINGTON, D. C., *June* 20, 1905.

F. L. Siddons, Esq., Bond Building, Washington, D. C.

DEAR SIR: In response to your letter addressed to Mr. Hoover referring to the amount of principal and interest paid on the

290 notes of T. C. Daniel, secured on the Northwest Eckington property, we advise you as follows:

Total amount of interest paid to date	$16,944.83
" " " principal " " "	20,593.26
Sum total of payments	$37,538.09

Very respectfully,

GEORGE HOWARD, *Treasurer.*

Address all communications to the Company.

Testimony on Behalf of Defendant in Sur-rebuttal.

Filed October 31, 1905.

FRIDAY, *June 23rd,* 1905—7.30 o'clock p. m.

Met pursuant to agreement of counsel, at the same place, on Friday, June 23rd, 1905 at 7.30 o'clock P. M.
Present: Same counsel.

Whereupon T. CUSHING DANIEL resumes the stand for further redirect examination.

By Mr. SIDDONS:

Q. On page 228 of the testimony in rebuttal, Mr. Daniel, you stated that Mr. Campbell had obligated the enterprise something over $15,000, besides the $25,000 secured upon the two family apartment houses. Are you able to state more definitely what that amount is?

Mr. RIDOUT: Objected to on the ground that it is not rebuttal and immaterial.

A. Yes, sir. It amounted to $16,173.94, including the balance of a renewal note that I had endorsed for Mr. Campbell at the Citizens' National Bank of $1,400.

Q. And that was the amount of the note at the time the obligations footed up the amount you just stated? A. Yes, sir.

T. CUSHING DANIEL.

Subscribed by me for this witness this 28th day of October A. D., 1905.

JOHN A. SWEENEY,
Examiner in Chancery.

291 *Testimony on Behalf of Defendant in Sur-rebuttal.*

Filed October 31, 1905.

In the Supreme Court of the District of Columbia.

In Equity. No. 24463.

NORTHWEST ECKINGTON IMPROVEMENT COMPANY, a Corporation; SAMUEL C. REDMAN, and T. CUSHING DANIEL, Complainants,

vs.

CHARLES M. CAMPBELL, Defendant.

WASHINGTON, D. C., *June 23rd*, 1905—
7:30 o'clock p. m.

Met, pursuant to agreement of counsel, at the office of solicitors for complainants in the Bond Building, corner of 14th Street and New York Avenue, N. W., Washington, D. C., on Friday, June 23rd, 1905, at 7.30 o'clock, P. M. to take testimony on behalf of the defendant in sur-rebuttal in the above entitled cause.

Present: Mr. Siddons on behalf of the complainants, and the complainant, T. Cushing Daniel, in person; Mr. Ridout on behalf of the defendant, and the defendant, Charles M. Campbell in person.

Whereupon JOHN H. MOORE was produced as a witness on behalf of said defendant in sur-rebuttal, and who having been first duly sworn, testified as follows:

Direct examination.

By Mr. RIDOUT:

Q. Please state your full name? A. John H. Moore.

Q. Captain, were you an officer of the Citizens National Bank? A. I was.

Q. What office did you fill? A. I was vice-president of the Citizens National Bank from the time of its merger with the West End, in March, 1903, until it merged into the Metropolitan.

Q. Was a note of $2,000 made by Charles M. Campbell and endorsed by T. Cushing Daniel, dated September 22nd, 1902, presented to you at the Citizens National Bank for discount? A. I was not there at the time. I had nothing to do with the bank at that time.

Q. After you went to the bank did you find such a note, or a renewal of it? A. I believe there were some notes as you describe in the bank when I took charge.

Q. Can you recollect upon whose name you relied in permitting renewals of the note you found there with Mr. Daniel's endorsement, made by Campbell.

Mr. SIDDONS: I object as totally immaterial and irrelevant.

A. I relied on Mr. Campbell entirely.

Q. Did Mr. Campbell at any time, in connection with a re-
292 newal of the note to which I have referred, state to you that Mr. Daniel was a cousin of Senator Daniel's, a man who could refer to Mr. C. C. Glover, and did you on the strength of those representations grant a loan, or a renewal of a loan, to Mr. Daniel? A. I am very positive that Mr. Campbell never made any such statements to me. I never heard until to-day that there was any relationship between Mr. Daniel and the Senator. And I was not aware even of his acquaintance with Mr. Glover.

Q. Did you know anything about Mr. Daniel's financial condition at the time you went into the Citizens Bank? A. I did not.

Cross-examination.

By Mr. SIDDONS:

Q. Captain, whom did you succeed in the Citizens National Bank as the active executive head of the institution? A. E. S. Johnson.

Q. He was the president of the institution? A. He was the president.

Q. Before the control was acquired by the West End? A. Yes, sir.

Q. And who was the cashier? A. Mr. Pearsall. Now, I would not swear to his initials. I think T. C. were his initials.

Q. He went out when you went in? A. He went out about three or four months afterwards.

Q. Was there an officer or employee in the bank when you were in there, named Olds? A. He was assistant cashier.

Q. And you found him there when you took charge? A. I did.

Q. Do you know how long he had been there prior to that? A. I do not.

Q. Captain, how long after you assumed charge of the Citizens was it that this note came up for renewal? A. I should have to look at the records to answer that question.

Q. That you don't recall? A. No. There were thousands of them that went through my hands. Most of the notes were ninety days, and it must have come up within ninety days after I took charge.

Q. And how often did you renew that note after you took charge? A. I could not say positively without the record.

Q. That you don't recall? A. No. It was renewed every three months for a long time.

Q. Were curtails made on the occasion of each renewal. A. Most always; about always.

Q. What is the requirement in the discounting of paper, or what was the requirement as to the discounting of paper by a national bank at the time you took charge and during the period covered by the subsequent renewals of this note? A. Do you mean in regard to the law?

Q. In regard to the requirement as to the number of persons that must appear on a note. A. I always insisted on having two name paper.

Q. Then, when you insisted on having two name paper, do you

wish to be understood as saying, when you only regarded Mr. Campbell, that that was merely to comply with the requirement as
293 to the paper, and that you did not consider the solvency of but one on the paper? A. That was very often the case.

Q. And that you would in fact make discounts at your bank, only relying upon the financial ability of one person on the note? A. I have accepted notes that way several times.

Q. Did you make any inquiry on the occasion of any of the renewals of this paper as to Mr. Daniel? A. I obtained reports from the Commercial agencies on Mr. Daniel, and on Mr. Campbell; both of them.

Q. What was the occasion of making inquiries as to Mr. Daniel? A. Merely carrying out my plan of having on file the reports on all our names in our office.

Q. For what purpose in this case was it or what was the object of it? A. In this case I had no special purpose, because I had looked entirely to Mr. Campbell for the note. He deposited with us. I did not know Mr. Daniel.

Q. But you had made inquiries as to his financial responsibility? A. I had. At some period of the time I did make inquiries.

Q. So that when you took up these renewals, as I understood you, at some stage after you took charge of the Citizens National Bank, you did in fact make an investigation as to Mr. Daniel as well as to Mr. Campbell? A. I did.

Q. Didn't you find anything on the subject in the bank, Captain, when the matter was called to your attention? A. I am very positive that I did not. They had very few records or reports of different people. There were very few of them there; and I started in a system of having reports on all of them some months after I went in.

Q. Did you get a report on Mr. Campbell? A. I did, but before getting that I had inquired of our directors and also of a number of our depositors in regard to Mr. Campbell, because he was the one that did the banking business and the one to whom I was looking.

Q. Did he bank with you at the time? A. I believe he did.

Q. What was the amount of the note on the occasion of his first renewal under your management? A. I could not say without looking at the records.

Q. You don't recall that? A. No. They were too many. Hundreds or thousands of them went through my hands.

JOHN H. MOORE.

Subscribed by me for this witness this 21st day of October, A. D. 1905, by agreement of counsel.

JOHN A. SWEENEY,
Examiner in Chancery.

294 At the same time and place also appeared DANIEL C. FAHEY, who was produced as a witness in the same behalf and who, having been first duly sworn, testified as follows:

Direct examination.

By Mr. RIDOUT:

Q. You know the property out in Northwest Eckington, two rows of five houses each, do you not? A. Yes.

Q. What work did you do on those houses, or of what kind of material did the work consist of? A. I did the excavating and concrete work.

Q. In connection with that work do you recall whether any note was given for $200, which was placed for collection in Bell & Company's bank? A. Well, I can say there were several notes, and amongst them there was one of $200.

Q. In connection with that note, do you recollect any conversation you had with Mr. Daniel concerning its approaching maturity? A. Yes, sir.

Q. What was that conversation? A. I found out that the note was due, and I went up to Mr. Daniel's office and I asked him about it. And he said he was about leaving town. And I asked him what he intended to do about it; and he said he did not know—as much as to say he did not care.

Mr. SIDDONS: I object, and move to strike out the answer of the witness.

A. (continued). He acted that way.

Q. Did you make any suggestion to him about his making any provision for it? A. I made a suggestion to him about making provision for it; and he said he had nothing to do with it in any way, shape or form. He said that Mr. Campbell was under contract. And I asked him what his name was doing on the back of the note; and he did not seem to think much about it.

Q. Did you call his attention to anything concerning the amount of interest due on it? A. Yes.

Q. What did you say about paying that? A. I said if he paid the interest and protest fees that I would hold it over until Mr. Campbell came back.

Q. What was his response to that? A. He would not do that or have anything to do with it.

Q. Where did that conversation occur? A. At 1410 G Street, at his office.

Q. What became of the note? Did it go to protest? A. It went to protest.

Q. What did you do to take care of it? A. I did not do anything. I simply took it up at our bank and waited until Mr. Campbell came home. I think Mr. Campbell came home a week or ten days afterwards.

Q. Did you have any other conversation by telephone with Mr. Daniel concerning this note? A. Yes.

Q. When was that? A. About the same time; before I saw him.

295 Q. What did you say to him then as near as you can recollect? A. Well, I said pretty nearly the same thing that I said at his office, and that I did not think he was much of a man to let his note go to protest. And I still think that.

Q. What did he say to that? A. He said he was under contract with Mr. Campbell, and Mr. Campbell was to look out for these notes; and he hung up the telephone.

Q. Do you remember who paid the note finally? A. Mr. Campbell paid it when he came home.

Cross-examination.

By Mr. SIDDONS:

Q. Mr. Fahey, when did this note mature? A. It was about August; the latter part of August, 1903.

Q. The latter part of August, 1903. A. Yes.

Q. Who was on that paper besides Mr. Daniel? A. Mr. Campbell, Mr. Daniel and Mr.—what is his name—Mr. Redman.

Q. Who made the note? A. If I recollect right, I think it was the Eckington Improvement Company, and endorsed by these three people.

Q. Endorsed by these three people? A. Yes.

Q. Pending its maturity did you have any communication, or receive any communication from Mr. Campbell regarding the looking after of his note? A. Mr. Campbell was out to town.

Q. Did you receive any communication from him looking to the protection of the note when it matured? A. I believe Mr. Campbell wrote us a letter.

Q. Have you that letter? A. I will try to explain about that. We did not get the letter until after the note went to protest.

Q. You got a letter? A. Afterwards.

Q. That letter did not contain any protection for the note, did it? A. No. He said he would take care of it as soon as ever he arrived home.

Q. Was that letter received after the protest? A. After the protest. I think the next day or two we received a letter.

Q. But prior to that time Mr. Campbell had not communicated with you with a view of protecting the note when it matured, had he? A. No, sir.

Q. So that, whatever was the fact as to Mr. Daniel, it was equally true that Mr. Campbell had done nothing to protect the paper; isn't that so? A. Yes.

Redirect examination.

By Mr. RIDOUT:

Q. It is true he finally paid it? A. Yes, he finally paid it.

By Mr. SIDDONS:

Q. Mr. Fahey, have you any of the notes that were at any time given by Mr. Campbell or endorsed by him for any of these Eckington enterprise? A. Have we any of the notes?

296 Q. Yes. A. No, sir. They have all been turned over.

Q. At the time you were doing this excavating that you started in to do, the excavating and concreting work out at these Eckington houses, were you not doing some work for Mr. Campbell on a private job of his?

Mr. RIDOUT: Objected to as not cross-examination.

A. Why, I think we had about finished up for Mr. Campbell.

Q. You had finished or were finishing up a job for Mr. Campbell? A. No. We had finished it. We were entirely finished before the Eckington houses were started.

Q. And what property was that that you did that work on? A. For him?

Q. Yes. A. About where he built, adjoining his house.

Q. When the excavating and concreting work was commenced by you on the Eckington houses, had you been paid in full by Mr. Campbell for the Hill job? A. We had taken some notes from Mr. Campbell. I think we were pretty nearly paid up before we started. There might have been something left over. The notes were given for his own individual work as C. M. Campbell, not the Eckington Improvement Company.

Q. You cannot tell certainly whether they were paid or not? A. Every note that ever had his name on it was paid.

Q. I mean, when you commenced the excavating on the Eckington work? A. I cannot swear to that positively, but I think they were pretty nearly wound up.

(By Mr. RIDOUT:)

Q. The form of those notes, I understand you to say, was C. M. Campbell, and they related to the Columbia Heights work, and by the Eckington Company when they related to the Eckington work? A. Yes.

Q. What was your experience with Mr. Campbell in respect to his being a prompt payer, or not?

Mr. SIDDONS: I object.

A. Well, we would like to undertake about fifteen or twenty thousand dollars' worth of work for him, and would take his note for any amount.

By Mr. SIDDONS:

Q. The notes that you have been talking about that Mr. Campbell gave you for his hill job, when did you begin that work on the hill job? A. Oh, we were working for Mr. Campbell two years before we ever started the Eckington buildings, or a year and a half possibly. I judge that. I cannot get down to dates.

Q. When did you begin the excavating out at Eckington? A. I would have to look that up.

Q. You cannot tell approximately when you began it? A. No.

Q. Was it winter or summer? A. I think, if I am not mis-
297 taken,—I won't swear to this positively—it was the spring of the year.

Q. You cannot say positively when you began that work? A. I won't be sure. I would have to look that up. I could tell by looking at the dates.

Q. It was two years before that that you worked on the hill job? A. Possibly a year and a half before or two years. He built sixteen houses, if I am not mistaken, out there.

Q. Out where? A. At Mount Pleasant.

Q. He built sixteen? A. Maybe I am too many. There were five or six on one street and four or five on the other. Maybe there were ten or eleven.

Q. But you cannot fix within six months as to the time you commenced? A. No, I cannot.

Q. What was your work out on the hill? A. Excavating and concreting.

Q. Excavating and concreting? A. Yes, the same.

Q. How long before, in point of weeks or months, had you completed your work for Mr. Campbell on the hill, his own job, before you commenced the excavating and concreting at Eckington?

Mr. RIDOUT: Objected to because the question has been answered.

A. It is the hardest thing in the world to get at dates as we have so many different jobs.

Q. For Mr. Campbell? A. For different people. We cannot memorize those things.

Q. And you are not able to tell me—— A. I have no data on that.

Q. You are not able to tell me as to this large job on the hill, when you commenced it and when you completed it? A. No.

Q. You don't know, in reference to the excavating and concreting work at Eckington, when you commenced that, but I understand you to say you commenced it in the spring of the year? A. I told you I would not be positive about that, because I would have to look that up.

Q. How long ago was it? A. 1903.

Q. In 1903 you commenced the excavating and concreting on the Eckington job, in the spring of the year, to the best of your recollection? A. To the best of my recollection.

Q. Do you remember when you commenced your work for Mr. Campbell on the hill? A. I think the latter part of 1901 or 1902, the beginning of 1902.

Q. The beginning of 1902? A. Or the latter part of 1901, to form an idea as near as I can without looking at dates.

Q. In the latter part of 1901 or the beginning of 1902, you commenced the work out there on that job? A. Yes. I cannot keep those things in my head.

Q. That work was exclusively excavating and concreting; nothing else? A. Yes.

Q. Can you tell me when Mr. Campbell began to give you notes for the hill job, his own job? A. Well, he carried it along pretty well. He seemed to have a little money when he first started,
298 like all of them do, and after a while they get hard up and want to give a note.

Q. And that was the case with him? A. That was the case with him. He had to pay out a good many dollars.

Q. So, at the close of his work on the hill he began to get hard up and gave notes? A. He carried that job along without making a loan, and he had to give notes.

Q. Did you understand that? A. Yes, I understood that.

Mr. RIDOUT: He is talking about the hill houses.

Q. And your understanding is that Mr. Campbell did that work without obtaining a loan? A. I did not say that. I guess you misunderstood me.

(Latter part of the testimony read to the witness.)

A. (continued). What we call without making a loan is to carry if to the roof and then make a loan. That is what we call making a loan.

Q. What you mean by making a loan is making a deed of trust or a mortgage? A. Yes. He carried it on his own——

Q. How did you get that understanding? A. Mr. Campbell told me so and I saw it on record. Mr. Campbell told me.

Q. He did not make a loan on the houses at first, had he? A. He had not.

Q. When did you understand he did make it? A. Three or four months afterwards.

Q. What was the condition of the buildings up on the hill when he obtained the loan, as you understand it? A. I think he carried them very nearly to the roof.

Q. Very nearly to the roof? A. Yes.

Q. And that you think was three or four months after you commenced to do the excavating and concreting work? A. As near as I can judge, about that time.

Q. And later, after obtaining the loan, Mr. Campbell got hard up and began giving you notes, towards the conclusion of that work? A. Do you want me to tell you a little conversation Mr. Campbell told me?

Q. No, I will ask you what I want. And that giving of notes continued to the conclusion of the work for him? A. Yes.

DANIEL C. FAHEY.

Subscribed by me for this witness this 21st day of October, A. D., 1905, by agreement of counsel.

JOHN A. SWEENEY,
Examiner in Chancery.

299 Also STACEY M. WALLACE was produced as a witness in the same behalf, and who having been first duly sworn, testified as follows:

Direct examination.

By Mr. RIDOUT:

Q. Please state your full name? A. Stacey M. Wallace.

Q. Mr. Wallace, you know the houses out in Northwest Eckington, the ten houses that were built out there, don't you? A. Yes, sir; I do.

Q. Now, do you remember the comparative size of the west house of the south row? A. Yes.

Q. How does it compare with the other houses in that row? Is it larger or smaller? A. It is larger because that has no light shaft. The light shaft is larger, and then in addition to that there is a bay window.

Q. What work did you do in connection with those houses? A. Well, I nailed on some of the lumber, and worked on it some of the time.

Q. Who superintended the construction? A. I had rather the oversight of it.

Cross-examination.

By Mr. SIDDONS:

Q. I understood you to say, Mr. Wallace, that you superintended the work out there, didn't you? A. Yes, I had the oversight.

Q. Who paid you? A. Well, Mr. Campbell did the paying principally. The last payment was made, I believe, by Mr. Daniel.

Q. How much did Mr. Campbell pay you? A. It has been some time. I rendered a statement here, but I have forgotten how much it was.

Q. I mean at what rate? A. How much a day?

Q. Yes. A. Well, until such a time it was $3. for eight hours, and after July, after the light was longer, it was $3.50 for nine hours.

Q. Did you get any part of the $3. from the carpenter? A. Yes. The time Keyes was working there under contract he paid me all the time so much; not $3. a day. Some of the days he did when I worked nine hours, and this man (the defendant) paid me.

Q. How much did Mr. Campbell pay you and how much did Mr. Keyes pay you? A. Well, at the time that Keyes was paying me Mr. Campbell was not giving me any money at that time.

Q. He was not giving you any? A. No.

Q. Mr. Keyes the carpenter, paid you all? A. Yes; as long as he was paying me Mr. Campbell paid me none; that is, there was a portion of it held back until later on when the final settlement came.

Q. How long was Mr. Keyes there, Mr. Wallace? A. Mr. Keyes must have commenced there along about in September sometime, and he quit I think sometime in May; sometime about the 11th of May.

300 Q. And during that period, from September to May, he paid you the wages that you testified to, the $3. a day when you worked eight hours? A. No, I was to have $3. I did not say he paid me all. He paid me a certain amount every Saturday night, and sometimes more and sometimes less. And one Saturday night I only got $1. and one Saturday night I got nothing at all.

Q. It was $3. a day when you were paid? A. I charged at that rate, yes.

Redirect examination.

By Mr. RIDOUT:

Q. Mr. Wallace, how much did Mr. Campbell pay you and how much did Keyes pay you, of the $3? A. How much did Keyes pay me and how much did Campbell pay me?

Q. Yes. A. I think, if my recollection serves me right, that I got about an average of $2.50 maybe out of Keyes.

Q. And how much out of Campbell? A. The balance came out of the company, I suppose.

Q. And you got $3. a day for a certain period, and—— A. $3.50 the balance.

Q. And $3.50 for the balance of the time? A. Yes.

Q. Can you say with certainty how much of that Keyes paid you and how much Campbell paid you? A. I could give you the amount in full if I had the statement, how much Keyes paid.

Q. Where is the statement? Who has it? A. Some of these people have it. I rendered a statement to those fellows one time and they got it. I have got it in my book at home, but I haven't got that book with me, and whatever that says I got. Part I got from Keyes and part I got from Campbell.

STACEY M. WALLACE.

Subscribed by me for this witness this 21st day of October, A. D. 1905.

JOHN A. SWEENEY, *Examiner.*

Whereupon CHARLES M. CAMPBELL appears as a witness in the same behalf, and who having already been duly sworn, testified as follows:

Direct examination.

By Mr. RIDOUT:

Q. Have you the receipt that Mr. Burnley gave you at the time when he says that the receipt that he prepared was not satisfactory? A. Yes, sir. (Handing paper to counsel.)

Q. In whose handwriting is this? A. Mr. Burnley's.

Mr. RIDOUT: I want to offer this in evidence, to be marked Exhibit C. M. C. Sur-rebuttal No. 1.

Mr. SIDDONS: Objected to as immaterial and irrelevant.

Q. Mr. Burnley also testified that he had a great deal of
301 trouble in getting his money from you. What is your recollection on that subject? A. That is entirely untrue. He got his money every Saturday night, as shown on that receipt, which gives the dates of each payment. And by reference to the calendar of 1902 you will find that he got the payments every Saturday night, except the week ending August 9th. That week I was in Ocean Grove, and he drew two payments the succeeding week when I came back.

Q. He testified also that you told him you were going to build up the whole ten and a half acres with houses. What have you to say about that? A. I did not tell him anything of the kind.

Q. What are the relations between Mr. Daniel and Mr. Burnley? A. Mr. Burnley is Mr. Daniel's man Friday, and they are very intimate.

Q. Did Mr. Daniel ever demand an accounting from you in the presence of Mr. Burnley? A. No, sir.

Q. What are the relations, and what have been the relations, between Junior Mr. Cowell, who testified here, and Mr. Daniel? A. They have been very intimate. I attribute all the trouble I had with Mr. Cowell in regard to that $450 to Mr. Daniel's instigation. In fact, he told me so. He told me that Mr. Daniel——

Mr. SIDDONS: I object.

Q. How many checks did you give Cowell after you found that he was erroneously crediting the payments you had made? A. Two

Q. What did you do, if anything, as a safeguard in connection with those checks? A. I asked him if he was crediting those amounts on the Eckington job, as I told him; and he said, no, that he was crediting it to the Hill job. And I made him sign the stubs of the remaining checks when he got the checks.

Q. Have you those stubs? A. I have the stubs here. (Handing papers to counsel.)

Q. How much had you paid him which had been erroneously credited before you took this precaution? A. $250, I think.

Q. Those are the stubs you spoke of? A. Yes.

Q. Whose signatures are those at the bottom? A. Young Cowell, who testified here.

Mr. RIDOUT: I offer these in evidence, to be marked Exhibit C. M. C., Sur-rebuttal Nos. 2 and 3 respectively.

Mr. SIDDONS: Objected to on the ground that they are immaterial.

Q. When did he render you a second bill at all with the amount proper credited? A. On January 5th, 1903. After I talked with him about the matter he brought me a second bill with the amount properly credited.

Q. He testified that you made it a condition of settling with him that he should credit these payments on the Eckington property. What is your recollection about that? A. I told him I wanted to settle with him, but I did not make it a condition in order to get him to give me a correct bill.

302 Q. He also testified that he made substantially no deduction when he settled with you in a suit which Cowell and Company brought. What is your recollection about that? A. I honestly tried to settle with him, but had some difficulty. He brought suit, and then allowed me nearly $400 outside of the court, and I gave him a check for the balance, which I would have been glad to have done in the first place.

Q. Mr. Daniel testifies on page 179 of his testimony that at the time these negotiations prior to March 13th, 1902, took place, that this property had various houses on it. What have you to say about that? A. I submit a tax bill for 1905 which shows that the land was assessed as agricultural land without any improvements on it.

Q. What is your recollection about it? I am talking about the ten and a half acres. What houses were on that land? A. There was not a single house on it.

Q. What houses is Mr. Daniel talking about? A. The land Mr. Daniel is talking about is owned by people who have no interest in this land.

Q. Were these houses within or without the ten and a half acres? A. They are without that land. I am not positive that there are ten and a half acres there.

Q. I am referring to the land which is the subject of this controversy, and my question is whether there were any buildings within the lines of that property? A. No, sir.

Q. What kind of a sewer was there there? A. A large trunk sewer that ran through to Brookland across this property. There might have been a small branch sewer to some of these houses. I don't know about that.

Q. How could you drain the houses? Did you run a sewer to the main sewer when you were draining the houses? A. We ran a small collateral sewer.

Q. Was that there prior to March, 1902? A. Not on this property. It was on Rhode Island Avenue, running to those houses, I presume. I don't know about that. This sewer was put in for the benefit of Brookland, and was six and a half feet in diameter.

Q. Mr. Daniel testified that he required you to deposit $500 on account of the Sanitary Dwellings Company, as an evidence of good faith. What have you to say about that? A. That is not true. That payment was made over three months after the contract was entered into. It was made over three months after the contract of March 13th, 1902, was made.

Q. On page 185 he speaks of an agreement, which he says is the agreement, and the only agreement, covering the fifteen cent a foot proposition concerning Redman's interest. When, if ever, did you see that paper before it was brought here? A. I never saw it in the sense of having read it, and I don't know what it contains to this day.

Q. What are the facts about the Redman proposition? A. Redman made his proposition verbally, and for several weeks or probably two months after the proposition was made, Mr. Daniel tried to sell the Redman interest at an advanced price to Mr. Riley and

303 Mr. McLeran and Mr. J. Nota McGill. And after that offer had been made improvements were going on rapidly out

there, and Mr. Redman slightly changed his figures. And it was at that stage that Mr. Daniel got up this agreement. That is not the agreement I referred to.

Q. What is your impression, from your knowledge of the situation, as to whether the paper referred to on page 185 of Mr. Daniel's testimony is the contract of the Redman interest?

Mr. SIDDONS: I object to the question as calling for the witness' impression.

A. I have very grave doubt as to its being that paper.

Q. Was the property actually platted or sub-divided as represented on the map drawn on the deeds of the Eckington Company? A. No, sir.

Q. What sort of map was it? A. That was a fanciful map Mr. Daniel got up, surrounded by illustrations, and never was recorded and accepted.

Q. Has any correct copy of the actual sub-division in Eckington been filed in this case? A. There has been a map gotten up, but that has not gone on record.

Q. Is it in evidence? A. It is in evidence.

Q. On page 188 he says that he flatly declined to allow you to insert in the contract of October 23rd, 1902, that the money that you had advanced for the Sanitary Dwellings Company was to be returned to you out of the first sale. What is your recollection about that? A. He executed the contract just as I wrote it, and I think I did cover that point in paragraph six. In addition to that he gave me a memorandum which is also in evidence, and across the face of the memorandum in his own handwriting he wrote that the money I had advanced in handling this matter was to be returned to me out of the first sale.

Q. On page 189 he says that the letters he wrote you in the summer of 1902, wherein he said that you were not to be expected to advance any more of your personal funds, must have referred to the Armat Company. What have you to say about that? A. That is not true. It is absurd. The letter itself shows it was about the transaction that culminated in the contract of October 23rd, 1902.

Q. On page 205 he says that a suit is pending against you for a balance of about a hundred dollars. What is the fact as to your responsibility for that balance? A. When a note for $450. came due at the Second National Bank, I paid all but $100, claiming he owed me that for personal loans, and that he had never sued me as he has testified, nor had Mr. Redman sued me. Next day he brought suit.

Q. On page 207 he says in substance that one of the considerations to Redman on the 15c. a foot proposition, was that Redman was to be released from certain trusts. What is your recollection about that? A. It simply amounts to this, that anybody who bought Redman's interest, bought it subject to the trust. That was the usual method.

Q. State briefly what your recollection is concerning Mr. Daniel's explanation on page 190 of the testimony, concerning the payment

of over $1,000 back taxes? A. He asked me to go over to
304 the District Building to make a payment of something like $122 taxes, which I did. And the conversation he relates there did not take place in regard to back taxes. I was not aware that there was such an aggregate of back taxes due.

Q. What have you to say about the modified explanation on page 200 of Mr. Daniel's testimony, concerning the $2,000 note. A. Well, after he testified that I had introduced him to cashier Moore, and on the strength of his supposed relationship with Senator Daniels and supposed acquaintanceship with Mr. Glover, that I had secured that loan, I showed that Mr. Moore was not in the bank at that time, and he changed his testimony very materially, and rung in the name of Mr. Olds as being the man he probably talked to. The conversation never took place with Mr. Olds or any other member of the bank.

Q. On page 204 Mr. Daniel says that the Ross ground is not as valuable as the Northwest Eckington land. What is the fact about that? A. I agree with Mr. Ross that the Center Eckington ground as a whole is fully twice as valuable as the Daniel ground.

Q. Do you know to what extent Ross has been engaged in building operations?

Mr. SIDDONS: Question objected to as immaterial and not rebuttal.

A. He has been engaged in building operations to the extent of about $1,000,000 in the last five years, and in this particular neighborhood he has investments of about $150,000 adjoining this property.

Q. Mr. Daniel says that the Ross ground is very much below grade. What have you to say about that? A. So is the Daniel ground, but Mr. Ross got it filled in practically at no cost to himself.

Q. On page 200 Mr. Daniel says that you tendered him a contract in July, 1903, which was like the old one except an additional paragraph setting forth that you had now fulfilled the requirements of your contract and was entitled to a one-third interest. What is your recollection about the presentation by you of any contract in July, 1903 to Mr. Daniel? A. That is absolutely false in toto. I have already testified that I presented him a contract in December, 1902, which he declined to sign.

Q. How many contracts in all did you ever present to him? A. I never presented to him but one, and when that contract was produced and it showed in an unmistakeable manner——

Mr. SIDDONS: I object to what it shows. I think there ought to be some limit to the witness giving his impressions and notions.

A. (continued). —that it bore date December 10th, 1902. Mr. Daniel then testified that there was a third contract.

Mr. SIDDONS: I certainly object to this witness stating what has been testified to here. I object to it on the score that it is wholly improper.

305 Q. How many contracts in all were presented by you to Mr. Daniel for execution?

Mr. SIDDONS: I object because the witness has already answered the question.

A. One, besides the original one.

Q. Then, there were two altogether? A. Yes.

Q. What was the date of the first one? A. The date of the first one was October 23rd, 1902.

Q. What was the date of the second? A. December 10th, 1902.

Q. Was there any other? A. No, sir; absolutely none.

Q. As a matter of fact, were the houses, in July, 1903, the second row of houses, actually completed? A. No, sir; they were not completed at that time. The second row of houses were just having the roof put on.

Q. On page 211 Mr. Daniels testifies that he was much annoyed by visits from creditors of the enterprise, and that among them was a man whom he knew to be a two percenter a month. What have you to say about that? A. I desire to call the court's particular attention to that remark by Mr. Daniel. We gave a note to Mr. Huddleston, the slater, for $75. He had it discounted by a two per cent. man, and I paid the note. That is the only connection I had with him.

Q. Mr. Daniel says on page 312, and again on page 245, that his financial credit was good during the period of the building enterprise. What have you to say about that? A. I have to say that from the standpoint of the necessities of this case in building these houses, it could not have been much worse; that ever since the beginning of this suit he has been sued for costs.

Q. My question is addressed to the time that this enterprise was in progress. On page 212 he says that the various sums he borrowed from you were two small amounts, $30. and $50., and these were repaid by the Armat Picture Co. What have you to say about that? A. I have to say that that was not all he borrowed. It was not repaid by the Armat Picture Company. In addition to the checks I gave, he developed a scheme of raising money by having a note which I endorsed for Mr. Parker Smith raised from the amount that I had contemplated, forty dollars. This he appropriated, and came and lay the half of it in my lap, although I did not want the money and did not need it, thus securing $20. without having any record made of it.

Q. On page 245 he testifies that your brother, J. W. Campbell, is the owner of all the equities in the real estate that stands in your name. What is the fact about that? A. I say it is absolutely false.

Q. On page 243 he says that you called on him about a $700 draft on your brother and that it was protected in December, 1903. What is the fact about that? A. In December, 1903, one day when I needed some funds, I went to him and asked him if he could not raise some money, as I often had done before. I got the same old

306 answer that he could not. I then told him I would have to draw on my brother, vice-president of the Joplin National Bank, and as he was not indebted to me I was afraid that the draft would be protested and I would have to protect the same, I using that as an argument merely to induce him to contribute some money to the enterprise.

Q. Was the draft in fact protested? A. No, the draft was not protested.

Q. He says on page 211 that the Eckington houses were tied up under a building loan so the income could not be used in carrying the Franz interest. What is your recollection about that? A. The Smith company, who made the loan, objected to the loan on account of the fact that the houses were much too far out in the country, and they would not take the loan unless we allowed them to use up $5,000 of the income as it matured in reducing the loan. We all agreed to that, and that is the way the loan was made. A portion of that has not yet been paid.

Q. On page 212 he says the Cowell $700 note had been paid off the day before when you testified it was still due. What is your recollection about that? A. If it was it was paid off by renewal at a small curtail.

Q. Was it in fact actually paid and ended? A. No, sir.

Q. On page 217 he says that the Cowell account which he has introduced in evidence here, in which there appears three items relating to him, was correct at the time the statement was made. What is your recollection about that? A. It was not correct then or any *any* other time. One of those items is a note of Daniel and Redman for $500. In fact that was a note of Daniel, Campbell and Redman, and was not properly credited to him, and he did not pay it. Nor were any of the other items on that bill paid by him. In fact he never paid Cowell a cent that was not returned to him by me; and I have exhibited the checks here.

Q. How much money did Daniel actually pay out to anybody connected with the enterprise?

Mr. SIDDONS: Objected to as all has been gone over in the case in chief and not proper sur-rebuttal at all. And I call the court's attention to the fact that that question was put at least twice before to this witness.

A. $3.63, so far as I am aware, up to December 31st, 1903.

Q. On page 219 he says that the only matter of discussion by Judge Campbell at your house on the occasion when you three met there, was connected with the Armat Picture Company. What is your recollection about that? A. Judge Campbell's testimony in that particular was correct. I had talked with him about the advisability——

Mr. SIDDONS: Now, I object as conversation with Judge Campbell out of the presence of Mr. Daniel.

Mr. RIDOUT (to the witness): You cannot give what you said out of the presence of Mr. Daniel.

A. I called Mr. Daniel out to see and advise with Judge Campbell

307 on that particular subject, the subject of calling a stockholders' meeting, just as the judge testified. The Jenkins matter was not mentioned.

Q. Was the date of the interview incorrect in Judge Campbell's testimony, as Mr. Daniel testified? A. No, it was not. It was correct. The note in Judge Campbell's note book.

Mr. SIDDONS: Now, I object to that.

Q. What is your independent recollection of the date when that interview took place? A. Shortly prior to the meeting of the stockholders—the call of the stockholders.

Q. What was the object of Judge Campbell's visit to your house and of his meeting Mr. Daniel on that occasion? A. He was there in a social way. He happened in at a fortunate time, and I telephoned to Mr. Daniel to come out, as Mr. Daniel did not want to call the stockholders' meeting, and I thought the influence of the judge would persuade him to consent to it.

Q. Had you been making any effort in connection with Mr. Daniel to sell the Redman interest to Judge Campbell? A. Judge Campbell had very intimate relations with the B. & O. Railroad. He had been a receiver of one of its branch lines for a period of over five years. Mr. Daniel and I both thought it would be very desirable if we could get him interested in the property, and we had discussed the Redman interest with him in a tentative way several times, although at that time Mr. Redman had not yet made a definite proposition. We had a very good idea what he wanted, though.

Q. When the notes which have been testified to by both yourself and Mr. Daniel, were given, what was the plan for providing for them? A. We expected to make sales of part of the property, as we did.

Q. On page 229 Mr. Daniel testifies that he and Mr. Redman never refused to pay up their shares of the curtails, but on the contrary you did. What have you to say as to that? A. I have to say that prior to December, 1903, on twenty-four different occasions when paper matured, when interest had to be paid or curtails made, I made them all. And after that period, when this dispute arose, I declined to further pay the whole amount of these notes as they matured, or the whole amount of curtails, but tendered on all occasions my one-third of them, by the advice of my counsel. And Mr. Daniel cannot cite a single case where I refused.

Q. Were there any times when they did pay curtails? I mean Mr. Daniel and Mr. Redman? A. Yes. After the Malnati money came in and since this suit was brought they have paid some curtails, and caused considerable embarrassment by refusing to pay others.

Q. Why were the curtails made twenty-five per cent.? A. They were made small to suit their convenience.

Q. Whose convenience? A. Daniel's and Redman's. I offered on several occasions to pay all the notes, and preferred to pay them all, but they refused to comply.

308 Q. Did you ever after December, 1903, offer to pay more than one-third? A. Yes, sir. I was so annoyed by the protests of paper and suits that had been filed that I wrote to the counsel of Mr. Daniel that I would be willing to pay one-half of all outstanding obligations and clean them up.

Q. Was that one of the letters Mr. Siddons has in his hands? A. I presume so.

Mr. SIDDONS: There is one dated January 5th, 1905.

Mr. RIDOUT: I offer this letter in evidence to be marked Exhibit C. M. C. sur-rebuttal No. 4.

Have you the other letter? (To Mr. Siddons.)

(Mr. Siddons produces letter dated January 10th, 1905.)

Mr. RIDOUT: I offer this letter in evidence, to be marked Exhibit C. M. C. sur-rebuttal No. 5.

A. (continued). When I wrote that letter I did not stop to figure the amount of obligations accurately, and when Mr. Siddons replied he said I made them too small.

Mr. SIDDONS: What date are you referring to?

Q. What letter are you referring to? A. That letter where I offered to pay, dated January 5th, 1905 (Exhibit No. 4).

Mr. RIDOUT: You are unable to find any other letters?

Mr. SIDDONS: You don't give me any date.

(Last answer read to the witness.)

Q. Do you want to add anything more to that? A. And he said his clients would each pay one-sixth if I would pay two-thirds. I declined and withdrew my offer.

Q. Look at this paper which I hand you, dated March 25th, no year being given, and state what it is? A. They sent out a note——

Q. Whom do you mean by they? A. Ralston & Siddons sent me a new note to be given to Cowell for a balance due Cowell. I declined to sign any more notes for the reasons stated in the memorandum that I returned to them.

Mr. RIDOUT: I understand you to say you cannot find the original of this paper? (To Mr. Siddons, referring to paper dated March 25th.)

Mr. SIDDONS More than that I don't think I ever received such a memorandum.

Mr. RIDOUT: I offer that in evidence, to be marked Exhibit C. M. C. sur-rebuttal No. 6.

Q. On page 233 a letter from Ralston & Siddons to you is given, referring to your refusal to sign a new Cowell note. Why did you refuse to sign it? A. I refused to sign it because the notes I had given to Cowell were taken around to my bank and allowed to go to protest. I refused to sign any more, proposing to send my share in cash.

Q. The paper just offered in evidence is the paper giving your reasons? A. That is the paper I sent saying I would not sign any more notes, and saying that they had let the notes go to protest at my bank.

309 Q. On page 218 Mr. Daniel says that at the time of the Malnati sale you were in default on the houses five or six thousand dollars. What have you to say about that. A. I have to say I was not. I had far overpaid my share of the enterprise as a whole. He probably tried to arrive at that conclusion by segregating the houses from the rest of the enterprise.

Q. On page 246 he says that he owns the Woodley Inn property, and that it is worth $25,000 less the mortgages. Did he ever give you the history of his acquisition of that property? A. He did in great detail.

Mr. SIDDONS: Question objected to.

A. (continued). He said that one night at Woodley Inn where he was boarding at the time, he heard a conversation to the effect that the property was owned by an imbecile or infant, who lived near New York, possibly in Connecticut, and that the trustee or guardian of the child or imbecile had not been here for a number of years; and that when he heard it he slipped on the train and went over to New York and bought the property at a very low figure. He intimated that he was enabled to borrow on the property more than he paid for it.

Q. Did Mr. Daniel ever demand an accounting from you in the presence of Mr. John E. Mitchell? A. No, sir; nor in the presence of anybody else.

Q. What were the relations between Mr. Mitchell and Mr. Daniel at the date when Mr. Daniel says he made that demand in the presence of Mitchell? A. Mr. Mitchell had desk room in Mr. Daniel's office. They were very intimate and had an arrangement for dividing commissions.

Q. Where was Mr. Daniel's office in 1902? A. At the Armat Moving Picture Company, where he had his office furniture.

Q. How frequently was he there during that year? A. He was there every day from about 9 o'clock till about 4 o'clock in the afternoon, with a possible absence or two in the summer.

Q. On page 229 Mr. Daniel says there was always great difficulty to get you to contribute to the curtail. What have you to say about that? A. I say it is absolutely untrue; as the correspondence itself shows I was always ready to give it. And if I wanted to burden the record I could bring every contractor here to testify on that point.

Mr. SIDDONS: I object to that, as to what they would testify to. Bring them here if you want their testimony.

Q. Mr. Daniel testified this evening that you had obligated the enterprise for $16,173.94 in excess of the loans obtained through the F. H. Smith Company. What have you to say about that? A. I have to say that that is not true. It is misleading. All the notes that were signed were signed with the approval of all the parties to the enterprise, and with their full knowledge of the situation. I created obligations no more than Mr. Daniel or Mr. Redman did.

Q. As a matter of fact, did those houses cost $41,173 to build? A. No, sir.

310 Q. And were obligations to that amount created by you and these other gentlemen? A. It is difficult for me to remember the figures in the account which I propose to submit to the Auditor, but the houses cost about $34,000, with the additional expense that was incurred by putting the second row on the south side of the street car track, and the lots cost twenty-five cents a square foot to get them released.

Cross-examination.

By Mr. SIDDONS:

Q. Mr. Campbell, when did this conversation which you have related regarding the purchase of Woodley Inn, take place. A. Oh, it took place probably a couple of years ago; possibly longer ago than that.

Q. Where? A. I cannot recall where the place was nor the exact day.

Q. I don't care for the exact date. Approximately? A. No; I cannot recall the approximate date; but I recall it very clearly because it was a very peculiar narration.

Q. You don't know where it was? A. I don't know where it was or when it was.

Q. Or the time of the year? A. No, sir.

Q. Whether in the spring, summer, fall or winter? A. No, sir; I don't recall the date.

Q. And you don't remember the place? A. Or the place. I simply remember his telling me that.

Q. Or the circumstances under which it occurred? A. No, sir.

Q. Did it occur more than two years ago, Mr. Campbell? A. I told you I thought it occurred about two years ago.

Q. Why do you say that? A. Because that is my recollection.

Q. But you cannot recall the place or the time beyond that? Your best recollection is it occurred two years ago? A. I answered those questions.

Q. Two years ago from this time? A. I said about two years ago.

Q. Dating from this time? A. Yes. Possibly longer than that.

Q. Do you think it was as much as four years ago that the conversation occurred? A. I believe I answered that, Mr. Siddons, as fully as I recollect.

Q. Would you say it did not occur more than four years ago? A. No. I would not say any more that I have said, that it occurred back of two years ago. I cannot recollect the date.

Q. What was your object in relating that conversation, Mr. Campbell? A. Because I wanted the fact to go on record as to this property. He claimed he owned it. I wanted the facts in regard to the purchase of it, how it was purchased, to go on record.

Q. What for? A. To meet the question of his bank credit and his financial credit that he testified to.

Q. How does the story as to the circumstances under which he

bought it, affect the question of his bank account about which
311 he testified? A. That shows he bought the property without any capital and he never had any capital to buy it.

Q. When did he buy it? A. I answered that question.

Q. When? A. I don't know when he bought the property; about four years ago. I don't know exactly.

Q. You don't know how long ago it was he bought it? A. No. To the best of my recollection it was about four or five years ago.

Q. And you cannot tell how long after he purchased it that this conversation occurred? A. No, sir; he told me the facts about it, and I remember it very clearly. I don't recollect the date, nor do I vouch for the accuracy of it.

Q. It is a little important I conceive, Mr. Campbell. I presume you want the facts in this case, and fix, if you can, the date of that conversation. A. Mr. Daniel and I had naturally a great many conversations, I don't suppose I could fix it on any of them.

Q. When did your acquaintance with Mr. Daniel commence? A. I cannot fix the date.

Q. Approximately how long have you known him? A. I think I have known him since about 1898.

Q. About seven years? A. Yes, sir.

Q. Would you swear that this conversation about the purchase of Woodley was after you entered into the Sanitary Dwellings Contract? A. I cannot answer it any more fully than I have answered it.

Q. Would you swear that the conversation occurred after or before the contract of October 23rd, 1902 was made? A. No, sir.

Q. It made no such vivid impression on your mind that you can recollect when it occurred, except as you have stated here? A. No, sir.

Q. Then, if it occurred prior to March, 1902, or prior to October 23rd, 1902, it would not have affected your entering with Mr. Daniel into those contracts, would it? A. I was not aware of what his financial situation was.

Q. That is not an answer to my question.

(Question repeated.)

Q. You don't answer the question except as you have answered it? A. Read the question again.

(Question repeated to the witness.)

A. No, sir.

Q. You said just now that you were not aware of Mr. Daniel's financial situation. To what time do you refer when you state that? A. I was not aware of his financial situation when I entered into these contracts with him, except as he told me. He told me he was prepared to take care of his obligations.

Q. You made no investigations yourself? A. No, sir.

Q. The receipt of Mr. Burnley's that you produced you testified was in his handwriting? A. Yes, sir.

Q. Where was that receipt written? A. It was written in the office of F. H. Smith Company.

Q. How did it come to be written there? A. Because I had an appointment at that place with him.

312 Q. For what purpose? A. To return his papers to him.

Q. When did that occur? A. I don't recollect the date. It is stated on the receipt, I presume.

Q. The receipt is undated. Can you tell me approximately when it occurred? A. No, sir.

Q. Was it a year ago? A. I cannot recollect the date.

Q. How did you come to call on him for this receipt? A. I asked him for a receipt for the money I paid him, to save future disputes.

Q. When did it first occur to you that there might be future disputes? A. It naturally occurred to me I might want receipts from him.

Q. When did it first occur to you? A. After the Malnati sale when the property was beginning to boom.

Q. After this controversy had arisen you produced this receipt? A. Mr. Daniel by his changed manner indicated that there was trouble ahead. And we had sold a piece of property to Mr. Malnati that was to be purchased in the joint interest, and he put the money in his own bank account and refused to account to the company for it, and has not done so to this day. Shortly after that date he made certain threats to file this suit.

Mr. SIDDONS: Now, I move to strike the answer of the witness out as not in the least degree responsive to the question, and ask the Examiner to repeat the question to the witness.

(Question repeated to the witness as follows:)

Q. When did it first occur to you? A. In what respect? The property referred to in this answer was the Aaron Smith property and it did not belong to us jointly.

Q. Can you tell me, Mr. Campbell, when it first occurred to you that future disputes might arrive regarding the money you had paid to Mr. Burnley? I want the dates approximately. A. I never had any intimation of any trouble until after the Malnati sale, which was in December, 1903.

Q. How long after the Malnati sale? A. Well, when the dispute arose. It became acute after the dispute arose, about the $4,000 settlement.

Q. I say how long after that had it occurred to you? A. I am telling you when it occurred to me; shortly after the Malnati sale, which was in December, 1903. I cannot fix it any more definitely than that.

Q. Was it in January? A. I have no further answer to make than the one I have made.

Q. Was anyone else present besides yourself and Mr. Burnley when that paper was written up? A. No, sir.

Q. Now, you say that that is in Mr. Burnley's handwriting, and he signed it? A. Yes.

Q. Where were those figures obtained from that appear on that receipt at the time it was compiled? A. I cannot recall whether he had the figures or not. I know I had the checks that I paid him. I always paid him by checks.

Q. And did you have them with you at the time this receipt was

made out? A. I exhibited the data to him and satisfied him, yes sir.

313 Q. And he took the dates and amount from the checks in every case? A. I don't recall the facts about the matter, but I satisfied him that the dates and amounts were correct.

Q. Did he have any memorandum with him when he wrote that out? A. I cannot recall whether he did or not.

Q. Would you say he did not have? A. No, I would not.

Q. Would you say he did not have? A. No, sir.

Q. You have no recollection? A. No, sir; I don't recollect.

Q. Would you say he compiled that from memory at the time? A. No, sir.

Q. Why do you say it was not compiled from memory? A. I told you I submitted data to him, embracing each check I had given and the date and amount, to his satisfaction. He then drew up the receipt and signed it. That is as specific as I can make it.

Q. Did he take the figures you furnished from your data? A. I don't know whether he had any data or not.

Q. Did you see him write that? A. Yes. He wrote it freely.

Q. And you don't know whether he put those figures and those amounts from your data or your checks or not? A. I have no further answer to make to that question.

Q. Mr. Campbell, who prepared the proposal of sale and purchase of this ground in controversy that was offered to the Sanitary Dwellings Company, and which is spread upon the minutes from which we read the other night? A. I don't recollect without seeing it. I don't recollect whether I or Mr. Daniel prepared it, or we both prepared it.

Q. You cannot recall that? A. No, sir.

Q. Did you take it to the meeting with you? A. I took it to the meeting with me, yes, sir, I presume. I would like to know exactly what you refer to?

Mr. RIDOUT: It is the proposal which was submitted to the board of directors by you to sell to them, the Sanitary Dwellings Company, these ten acres of ground.

Mr. SIDDONS: That is right.

A. I took it to the meeting. I cannot tell who prepared it. I think I prepared it, probably with Mr. Daniel's assistance.

Q. When that $2,000 discount was first obtained by you, did Mr. Daniel accompany you either on the day that the discount was actually obtained, or on or about the time it was obtained? A. No, sir. He may have gone into the bank with me, but I did not introduce him to Mr. Johnson.

Q. Or anyone else? A. No, sir.

Q. Where did you go? A. I went to Mr. Johnson's office.

Q. You saw Mr. Johnson? A. Yes.

Q. And Mr. Daniel did not accompany you into the room? A. No, sir.

Q. With Mr. Johnson? A. No, sir; absolutely not.

Q. Where did he stand? A. If he was there he was out in the

bank. I cannot recollect accurately about that. I won't say he was not there, but he was not in Mr. Johnson's office.

314 Q. Did you talk with anybody except Mr. Johnson on that occasion? A. No, sir. I never talked with Mr. Olds in the bank. Mr. Olds did not have the case in charge.

Q. You referred in your examination in chief, Mr. Campbell, a while ago, to some scheme of Mr. Daniel's by which he raised a note. I did not catch all your statement. I wish you would repeat it. A. I simply said he had other methods of raising money than taking my checks; that I had given him more checks than he said I had given him, and in addition, Mr. Parker Smith, who had a desk room with Mr. Daniel at the Armat Company's office, one day wanted to borrow some money at the bank, and asked me to endorse his note, and I did so. And he gave the note to the cashier, and it was discounted. Either at that time or when the note was renewed, Mr. Daniel had the note raised forty dollars. When Mr. Smith got the money Mr. Daniel took $20, and laid $20, on my lap. That was a new method to me, and it gave him $20, without making any record whatever.

Q. You say he raised the note? A. No; he raised the note in the way I now describe.

Q. Mr. Parker Smith consented to it, didn't he? A. Certainly.

Q. And you as endorser consented to it, did you not? A. Certainly.

Q. And you took half of the increase? A. Yes; when he threw it down in my lap. I had no idea he was going to do that.

Q. You took and you kept the $20? A. Yes.

Q. What was your purpose in relating that incident, Mr. Campbell? A. Mr. Daniel said in his testimony that he had only received two small checks from me. And as I recollect, that they were repaid to him by the Armat Company. That was a totally misleading answer, and I wished to correct it on sur-rebuttal that I had not only given him more than two checks, but I had in addition given him money in other ways that did not create a record.

Q. Do you wish it to be understood that as a result of this raising of this amount on this note, that you have testified to, that it was a method by which you gave Mr. Daniel $20? A. Yes, sir; at his solicitation and instance.

Q. You mean he proposed it to you? A. No. He carried the whole deal through. I did not object to it. Let him have it that way.

Q. Whatever it was you consented to it? A. I consented. I don't mean to imply he criminally raised the note at all.

Q. And you did not need the $20? A. No, sir; not at all.

Q. You were liable on the note? A. Certainly.

Q. And you were willing to have it increased by $20, that you did not need? A. Certainly.

Q. But which you took? A. Yes, for his accommodation.

Q. How was it an accommodation for him if you got the $20? A. Because he needed $20, and I did not, and I accepted the $20.

Q. You said, Mr. Campbell, that your brother had no equity or interest in the equities in any of the property standing in your name.

Mr. RIDOUT: Objected to. That is not the answer the witness has given.

315 Mr. SIDDONS: What was his answer?

Mr. RIDOUT: My question was if the equities in the real estate in Washington standing in his name really belonged to James M. Campbell, and he said no.

Q. Your brother is interested with you? A. Yes. He has a half interest in all the property that we hold jointly.

Q. Of course, that may be much or little. Does that refer to the property on the hill? A. Part of it.

Q. The apartment house, the Berwick? A. Yes.

Q. The houses on Columbia Road remaining unsold? A. No, sir.

Q. None of those? A. No, sir. He is interested in Lot 2, Block 34, a half interest, which I improved. He has since agreed to accept my half interest in a lot we hold jointly on Princeton Street in exchange for his half interest in lot 2, Block 34.

Q. Your brother and yourself had a controversy about your interest that you were holding in common, did you not, Mr. Campbell? A. We had a controversy, yes.

Q. And Judge Campbell, your brother, consulted attorneys here, did he not? A. He did, I believe.

Q. Messrs. Hamilton & Colbert, was it not? A. Yes, sir.

Q. When did you compose your differences? A. Oh, the proposition was made and accepted over a year ago.

Q. How much over a year ago? A. I don't recall the date.

Q. I don't want the date. I would like to know about when. A. I don't know the date.

Q. Over a year ago might be ten years ago, and I know you don't mean that. A. And I also wish to state that we have friendly differences at the present time.

Q. Friendly differences? A. Yes. He is at my house frequently when he comes to town.

Q. Don't you think you can come nearer than over a year ago when you settled the differences between yourself and Judge Campbell, differences so acute that it led him to consult counsel, Mr. Campbell? A. No. I cannot at this moment give the date. The differences have not all been settled yet, but they are not other than I have testified to.

Q. Mr. Campbell, you said that the Joplin draft was not protected, in response to a question that Mr. Ridout asked you, I believe. You did draw on Joplin? A. Yes, sir.

Q. And for $700? A. Yes, sir.

Q. And was that draft paid by your brother when presented? A. It was.

Q. And did your brother, the vice-president, I believe you stated, of the Joplin Bank, object to your drawing that draft? A. He paid it very cheerfully.

Q. You mean he did not object? A. I won't say whether he objected or did not object. He paid the draft; but I was afraid he would object, and I told Mr. Daniel so under the circumstances I explained.

Q. I am asking you now whether he did not object to the drawing of that draft, although he paid it. A. He may have done so.

316 Q. Well, did he? A. I think he did object to drawing the draft. I was afraid he would at the time.

Q. How did he object? A. He objected by correspondence, of course.

Q. He wrote you a letter about it? A. No, I don't think he did. I forget how he did it, whether it was a letter or how. He naturally objected to my drawing without notifying him, suddenly that way, and he communicated that fact to me, but I forget how. I think it was by letter.

Q. You have that letter? A. No, sir.

Q. Where is it? A. I don't know where it is.

Q. Do you keep your letters? A. Not all of them.

Q. And this one you haven't kept? A. Social letters, no. I have a great accumulation I don't know where they are.

Q. But this letter you haven't kept? A. No, sir; I have not.

Q. That draft you deposited in the Citizens National Bank? A. Yes, sir.

Q. And you are quite sure it never came back unpaid? A. I am quite sure.

Q. Can you tell me when that incident, the drawing of that draft, occurred? A. December 21st, 1903.

Q. That is the day you drew the draft? A. Yes, sir.

Q. I don't know that I quite understood you, Mr. Campbell. See if I got this correct. I think you said that prior to the dispute that arose growing out of the Malnati sale, you took care of all notes that came due and made the curtails, and that you had made some twenty-four of them? A. I said that I had made twenty-four payments of interest and curtails up to the time this dispute arose, or about that number.

Q. Well, during that period in which these twenty-four, which you have testified about, were made, how many curtails of notes that were maturing at that time were paid by anyone but yourself? A. I don't think any were paid by anyone but myself.

Q. And you paid twenty-four?

Mr. RIDOUT: He did not say he paid twenty-four. He said he paid twenty-four demands, some interest and some curtails.

(Question repeated to the witness.)

Q. You made twenty-four payments, as I understand you, before this dispute arose, that is on twenty-four different occasions you made payments of curtails or interest or both on maturing obligations as they occurred? A. Yes, sir. I don't wish to say that Mr. Daniel did not on two or three occasions advance checks, but they were repaid to him. There were occasions when I did not have my check book with me.

Q. And anything of that kind, if there were any in those twenty-four cases that you have referred to, in which Mr. Daniel loaned you a check or money with which—— A. For a day or two.

Q. (continued). —to meet these payments, you paid him back? A. Yes.

317 Q. Always that happened? A. I paid him all the money he advanced for this enterprise up to that date.

Q. And all of such checks or amounts he may have advanced you to take care of any of these payments of curtails or interest or both, that you have referred to, you repaid him? A. Yes, sir.

Q. These two stubs that you offered in evidence, which you say are signed by Mr. Sylvester Cowell who wrote the rest of them there? In whose handwriting is the balance that appears on those stubs? A. What do you mean by the balance?

A. The writing other than Mr. Cowell's own handwriting? A. I wrote it. And I wish to add that it was written at the time. Everything that is on those stubs was written at the time the stub was drawn. You intimated in your examination in chief that it was put in afterwards.

Q. I intimated in my—— A. Yes, you asked Mr. Cowell if it was possible for the word "Eckington" to be put in there afterwards. I wish to state it was not put in afterwards, but it was put in at the time the check was drawn and in his presence.

Q. Mr. Ridout asked you about a letter appearing at page 233 of the record addressed to you by our firm, and you stated that it was in response to that letter that this memorandum was sent, and you say, to us? (Referring to Exhibit C. M. C., sur-rebuttal No. 6.) A. I don't recall that I made any such statement, Mr. Siddons.

CHARLES M. CAMPBELL.

Whereupon an adjournment was taken to meet on Tuesday, June 27th, 1905 at 3 o'clock P. M. at the same place.

TUESDAY, *June 27th*, 1905—3 o'clock p. m.

Met, pursuant to adjournment last noted, at the same place on Tuesday, June 27th, 1905 at 3 o'clock P. M.

Present: Same counsel.

Whereupon EDSON B. OLDS was produced as a witness on behalf of defendant in rebuttal, and who having been first duly sworn, testified as follows:

Direct examination.

By Mr. RIDOUT:

Q. Mr. Olds, what banking institution, if any, were you connected with in 1902? A. The Citizens National Bank.

Q. Who was the president of that bank at that time? A. E. S. Johnson.

Q. Are you acquainted with T. Cushing Daniel, one of the parties to this suit, the gentleman who is here now? A. I have met Mr. Daniel, at least his face is familiar to me. I think I met him in the bank.

Q. Do you recall on any occasion being present with him and Mr.

Johnson and Mr. Campbell in the Citizens' National Bank
318 when Mr. Daniel was introduced either to you or to Mr. Johnson as a relative of Senator Daniel's of Virginia, and an acquaintance of Mr. Charles C. Glover? A. No, sir.

Cross-examination.

By Mr. SIDDONS:

Q. What was your position, Mr. Olds, in that bank, at the time Mr. Ridout indicated? A. I was assistant cashier.

Q. You were assistant cashier of the Citizens' National Bank? A. Yes.

Q. Do you remember a note of $2,000 that was discounted in that bank, a note of Mr. Campbell's on which Mr. Daniel was the endorser? A. Yes, I think I remember that.

Q. Do you remember whether, on the occasion of the granting of that discount, you saw Mr. Campbell and Mr. Daniel in the bank? A. No, sir; I don't recollect seeing them there together. I don't recollect the time when the discount was. I recollect the occasion. You mean the exact time?

Q. The occasion. —. Yes, I remember the occasion.

Q. Was not Mr. Daniel in the bank on that occasion? A. I don't remember Mr. Daniel's being there.

Q. Would you say he was not there? A. Well, I would not say positively. No, I would not say positively.

Q. The discounts made at that time for such an amount would be made by whom? A. By the president.

Q. By the president? A. Yes.

Q. And a party seeking such a discount would go to the president's desk, wherever that was, and consult him about it, I suppose, usually? A. Usually, yes, sir.

Q. I wish you would describe about the location of Mr. Johnson's desk when he was acting there as president, and on the occasion of this discount. A. Well, Mr. Johnson's desk was in the back part of the bank.

Q. In the back part of the bank? A. Not his room. It was not exactly a room actually, but the side had been taken out and it was—I don't know exactly how to describe it.

Q. When you entered the bank, how would you reach it? A. You would go clear back as far as you could go in the open part of the bank, and his desk was in the bank.

Q. Was it not to the left? A. You went to the left going in.

Q. You went to the left going in? A. Yes. All the offices were on the left.

Q. You went down the aisle to the left as you go in? A. You went down the aisle on the right as you went in.

Q. And you entered the bank and go to the right where you reach this pathway, or whatever you call it, down to the back part where Mr. Johnson would sit? A. You would come in the front door and go right straight forward and then turn to the left.

Q. That is what I mean. A. Yes.

319 Q. And that was at the back of the bank. A. That was at the back of the bank.

Q. And where was your desk at that time? A. My desk was the next desk to his, nearer the front.

Q. Nearer the front? A. Yes.

Q. And where was the cashier? A. The cashier's desk was back of mine. His was nearer to the front than mine.

Q. His was nearer to the front that yours? A. Yes.

Q. So, anybody going down there would pass the place where you were seated, going back to speak to Mr. Johnson? A. Yes, sir.

Q. Are you prepared to say that on the occasion when this discount was made, $2,000, you were not either called or sent for by Mr. Johnson, and came back into where his desk was and his room, and this note was signed by Mr. Campbell and endorsed by Mr. Daniel right there, the parties present being the president of the bank and yourself and Mr. Campbell and Mr. Daniel? A. Well, I have no recollection of it.

Q. You would not swear it was not so? A. Well, I don't think it was.

Q. That is as much as you can say about it. A. Yes.

Q. Of course, the obtaining of discounts for different people was a daily and almost hourly occurrence; certainly a daily occurrence, was it not? A. We had a good many discounts.

Redirect examination.

By Mr. RIDOUT:

Q. Mr. Olds, was it customary for Mr. Johnson, the president, to call upon you, the assistant cashier, to pass upon questions of discounts? A. No, sir.

Recross-examination.

By Mr. SIDDONS:

Q. You were not on that occasion consulted by the president as to whether the discount should be made?

Mr. RIDOUT: Objected to because the witness has testified that he was called on no such occasion.

A. Will I answer?

Q. Yes, you answer. A. Mr. Johnson might have consulted me afterwards; not at that time.

Q. Why were you called back there, Mr. Olds?

Mr. RIDOUT: Objected to because the witness has denied that he was called back there.

A. I don't recollect having been called back there.

Q. You didn't get this note from Mr. Johnson as the discount was allowed? Did he hand it to you? A. I don't remember.

EDSON B. OLDS.

320 Subscribed by me for this witness this 21st day of October, A. D., 1905, by agreement of counsel.

JOHN A. SWEENEY,
Examiner in Chancery.

ELEANORA T. FRANZ was called as a witness in the same behalf, and being first duly sworn, testified as follows:

Direct examination.

By Mr. RIDOUT:

Q. Mrs. Franz, you are the widow of the late Mr. Jacob Franz, are you not? A. Yes, sir.

Q. And you have had charge for a number of years of the mortgage given by Mr. Daniel on the property which Mr. Franz sold him out there in Eckington? A. I haven't had charge of it, but the trust company had.

Q. The trust company had charge of it for you after Mr. Franz died? A. They had charge right after it was sold.

Q. And after his death they continued to have charge of it, as your representative? A. Yes.

Q. Now, coming down to the year 1902, what was the condition of that mortgage as to the payment of interest? Was it in arrears or not? A. Well, rather I think it was.

Q. It was what? In arrears? A. Yes.

Q. What was the condition of the taxes, as you understood the situation? A. Well, I understood the taxes to have been paid up in full right along.

Q. How did you get that understanding? A. Well, I think Mr. Daniel gave me that understanding. Didn't you? (Turning to Mr. Daniel.)

Q. You cannot talk to anybody. You had conversations with Mr. Daniel about it? A. Yes, sir.

Q. Do you remember whether you had any in the year 1902 with him on that subject? A. Now, I cannot positively say that, but I think I had.

Q. Perhaps you can fix it in this way? Do you remember seeing an advertisement in the paper of the sale of that property for taxes? A. Well, didn't we? (Turning to a lady present.)

Q. You will have to answer the best you can from memory. A. My memory fails me.

Q. My question is whether you saw the advertisement in the paper. A. I think I did—not in the paper; in this book, I got.

Q. In the book the Commissioners issued? A. Yes.

Q. When you saw it in the book, what did you do about it? A. Well, as near as I can remember, I went to the trust company and saw Mr. Jones about it.

Q. Did you have any talk with Mr. Daniel about it at any time? A. I don't think I had at that time.

Q. When was the first time after you saw the book, as nearly as you can recollect it, that you saw Mr. Daniel about it, or that he

saw you about it? A. Probably the same year. It might
321 have been the year after that. I did not take every little thing to Mr. Daniel; I went to Mr. Jones, because he was representing me.

Q. Did Mr. Daniel come to you before you saw the publication in the book, and tell you that the reason it had been advertised was because they would not separate the property sold from the unsold property?

Mr. SIDDONS: The question is objected to, first, because it is leading; and secondly, as it fixes no time as to when such conversation occurred, if any.

(Pending question read to the witness.)

A. No, I don't remember that.

Q. Did you learn of the advertisement first from the book or from Mr. Daniel? A. No, I learned it from the book.

Q. Do you know how much of the money which Mr. Daniel received from the street railway Company, was used towards paying on your trust? A. I don't know, but I think it was between eight and eleven thousand dollars. I took very little interest in it at that time.

Q. Mrs. Franz, do you recall receiving at one time a deed from Mr. Daniel as additional security for the loan, or its being left for your benefit with the trust company? A. Yes.

Q. Do you recall now why it was you did not sell out under the deed of trust? A. No, I cannot recall that at all.

Q. What was the value of the property at the time you got that deed? A. Well, I should think the property was very low at that time. It was probably about 1902—no, about 1900. The property was very low at that time.

Q. Do you recall whether the low price of the property was one or any of the reasons why you did not foreclose? A. Yes.

Q. Do you remember whether in the year 1902, you finally did instruct Mr. Jones to foreclose? A. Yes.

Q. What was it that prevented that foreclosure? A. Well, always in hopes of raising the money and keeping from foreclosing it.

Cross-examination.

By Mr. SIDDONS:

Q. Mrs. Franz, when was the money received from the railroad company that you testified about? A. I cannot really say in what year it was.

Q. Could you say how many years ago it was? A. It has been at least eight or nine years ago; between eight and nine years as well as I remember.

Q. Was your husband living then? A. Oh, yes. That is the reason I did not take any interest in it at all.

Q. During your husband's lifetime the management of the property was in his hands, and he in turn placed it with the trust company, and it was his agent for looking after the property? A. Yes.

Q. And after your husband's death you simply continued that

agency, and left it in their hands? A. Yes. I did not want to be bothered at all about it.

Q. I think you said that it was in 1900 that you got the
322 deed from Mr. Daniel. Is that correct? A. I don't think it was in 1900, but I don't really remember.

Mr. RIDOUT: She did not say that.

A. I don't think it was in 1900.

Q. Can you recollect when it was? A. It was probably in 1902, or something like that.

Q. Are you sure about it? A. No, I am not sure. That is as close as I can remember.

Q. Now, any instructions that you gave for the foreclosure of the property were in writing, were they not, Mrs. Franz, to the trust company? A. I think they were. Were they not? (Turning to a lady present.)

Q. You can only give your own recollection about it.

Q. Are you able to fix the year, Mrs. Franz, when you saw, you testified, some sale of this property for taxes in this book? A. Probably in 1902 or '3 or something like that, or 1901.

Q. It might have been in any one of those years, 1901 or '2 or '3? A. No, it was not as late as 1903.

Q. Which as to 1902 or 1901, would you say? A. I cannot really say.

Q. Is your memory good about such matters, Mrs. Franz? A. No. Well, my memory is fairly good, but this is something that I left entirely with the trust company, and it was out of my line of business, for besides this I have quite a lot to attend to.

It is agreed that the Examiner may sign this deposition for the witness.

ELEANOR T. FRANZ,
By J. A. SWEENEY,
Examiner in Chancery.

Whereupon CHARLES M. CAMPBELL resumes the stand for further cross-examination.

By Mr. SIDDONS:

Q. Mr. Campbell, you say on page 25 of your testimony the other night that there was not a single house on this property at the time you entered into negotiations that have given rise to this controversy. I will ask you to explain and state just what land you were talking about. A. I was talking only about the land I secured an interest in; that is the land that is in controversy.

Q. Do you mean to say there were houses out there, but not on the land that became the subject-matter of this controversy? A. In my examination in chief I described the houses that were in that neighborhood, but they were not on this land.

Q. That does not answer my question. *Q.* Here is the question: "Mr. Daniel testifies on page 179 of his testimony that at the time these negotiations prior to March 13th, 1902, took place, that this property had various houses on it. What have you to say about

that? A. I submit a tax bill for 1905 which shows that the land was assessed as agricultural land without any improvements on it.

323 Q. What is your recollection about it? I am talking about the ten and a half acres. What houses were on that land? A. There was not a single house on it." That is your testimony? A. I say that now.

Q. The ten and a half acres that Mr. Ridout referred to—— A. I never said there were ten and a half acres.

Q. Then, Mr. Ridout was mistaken, not you? A. I don't know anything about Mr. Ridout. I said I didn't know whether there were ten and a half acres or not. I know that the land I got an interest in had no houses on it.

Q. Mr. Ridout's question is: "What is your recollection about it? I am talking about the ten and a half acres. What houses were on that land?" A. That is simply a general designation of the land.

Q. "There was not a single house on it." Do you wish to be understood as testifying that there was not a single house on the ten and a half acres referred to by Mr. Ridout in that question? A. I want to be understood distinctly as saying that there was not a single house on the land I secured an interest in. As to the number of acres, I don't guarantee there were ten and a half acres. I never did say there were ten and a half acres, except Mr. Daniel told me so.

Mr. SIDDONS: I will ask you to submit that question once more to Mr. Campbell. (To the Examiner.)

(Last question above repeated.)

A. I have no further answer to make to that unless my counsel advises me it has not been aswered.

Q. Now, Mr. Campbell, what were the outlines of this tract that was the subject-matter of this controversy? A. The outlines are very irregular. They had sold off a few lots on the northern extremity of the ground, and these lots formed a very irregular northern boundary line of the ground. It made the northern portion of the ground very irregular.

Q. Had they sold off all the lots of this northern portion you just referred to? A. No. They only sold two or three, according to my recollection, and possibly four.

Q. Now, taking the northerly line of the northern portion that you just referred to, and running it as it does run, between the easterly and westerly lines of the whole tract—I suppose that is as near as I can come to it—or beginning where the northerly line corners on the Madre line, are there any houses south of that line? A. Not on this property.

Q. You mean, not upon the property that remained unsold at the time of the negotiations? A. Not upon the property in suit.

Q. I did not ask you that. A. That is my answer.

Q. I asked you whether there are any houses south of that line. A. There are, I believe, three cheap frame houses, built about ten or twelve years ago, and one old brick, and possibly another frame

house, but I am not sure, that were built on lots that were sold off, as I understood from Mr. Daniel in 1892 or 1893 when they first bought the property, and with the exception of those houses
324 that no longer belong to the Northwest Eckington syndicate, there was not a single house on this property. That is what I mean to say.

Q. I agree with you. I think that is entirely correct. Mr. Campbell, referring once more to the Joplin draft, I understood you to say in your testimony in cross-examination the other evening, that the draft was paid by your brother out at Joplin, or wherever it was drawn, on presentation. Is that correct? A. Yes.

Q. Then, that never came back to the bank here and was taken up by you? A. No, sir.

Q. Mr. Campbell, in your testimony on page 51, testifying about the raising of the Parker-Smith note, whereby an additional $40. was obtained in some period of curtail, I think you said, and of that $40. you got $20. and Mr. Daniel got $20; that is to say, you testified that Mr. Daniel threw it on your lap and you kept it. When did you pay that back? A. When the note came due I believe Mr. Daniel and I jointly paid that amount in some way. I forget the details of it.

Q. The note was not yours, was it? A. Well, we got the money.

Q. No, no. A. I forget how it was straightened out, but I remember the incident very well.

Q. It was Parker Smith's note, was it not? A. Yes.

Q. He was the maker of the note? A. Yes.

Q. Didn't he pay it? A. Yes, sir; I think he did.

Q. And that note he paid included this $40? A. Yes.

Q. When did you pay back your portion of that $40., the $20. A. I don't recollect when nor how.

Q. Do you recollect that you did pay it back? A. Not at the present time. I think it was paid back by each paying his portion of it. I forget about the circumstances.

Q. Can you tell me whether you paid it by check, if you paid it? A. I have no further answer to make, Mr. Siddons. I have given you my best recollection.

Q. What I would like to know is, whether your check book does not show whether you paid it back or not? A. The probability is that when the note was paid I paid my proportion, that is $20., that Mr. Daniel threw in my lap. I cannot swear to it. Of course that would be the rational course to persue.

Q. If that occurred, whom did you pay? A. I don't recollect any of the facts as to how it was paid.

Q. On page 53, Mr. Campbell, referring to the interest that your brother had in some of the real estate here, this question was put to you: "Your brother is interested in you?" And you answered, "Yes. He has a half interest in all the property that we hold jointly." The property that you were then referring to in that answer, in whose name was it? A. In my name.

Q. And so far as the land records go your brother's interest was

not disclosed by the deeds? A. No, sir. He has sufficient confidence in me to place the title in me at the time the property was bought.

Q. And such of that property as stood in your name exclusively, but in which your brother had an interest jointly with you, that interest is a half interest? A. Yes, sir.

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CHARLES M. CAMPBELL.

Whereupon an adjournment was taken to meet subject to agreement of counsel.

Subscribed and sworn to before me this 21st day of October, A. D. 1905.

JOHN A. SWEENEY,
Examiner in Chancery

Opinion.

Filed December 14, 1905.

In the Supreme Court of the District of Columbia.

Equity. No. 24463.

NORTHWEST ECKINGTON IMPROVEMENT COMPANY et als.
vs.
CAMPBELL.

The bill of complaint in this case sets up the making of certain written contracts by the various parties to this suit for the development of a certain parcel of land in Eckington. The first contract is dated March 13, 1902, and the second, which purports to be and is both an extension and a modification of the provisions of the first, is dated October 23, 1902. These contracts were duly signed by all the parties—by the Northwest Eckington Improvement Co. as the owner of the land which it was proposed to develop—by T. Cushing Daniel and Samuel C. Redman as the principal stockholders of said Company and as persons associated in the enterprise—and by Charles M. Campbell as a "skillful builder" and manager of the enterprise "with such assistance as the other parties might be able to furnish." By the original contract of March 13, 1902, it was agreed that if Campbell would organize or be instrumental in organizing a Company for the purchase of said ground, and said Company purchased it, that he (Campbell) should have one-third of the price received therefor "whether of money, stock or property," and that in the event of such sale or disposition of said property in part only he should become possessed of an undivided one-third interest in whatever might be realized from such part. The Company so to be organized by Campbell was known as the Sanitary Dwellings Company, which project failed, and thereupon the subsequent agreement of October 23, 1902 was signed between the parties. By the terms of this agreement, it was provided, among other things, that any rights that

Campbell might have under the former contract should be preserved to him, and that the Sanitary Dwellings Company, if necessary, should be relieved from any obligations it may have assumed in regard to any agreement to purchase said property, and that
326 the property should be developed independently of the Sanitary Dwellings Company.

The bill further sets up that the enterprise was proceeded with, loans negotiated, houses built etc., and that a deed was made to Campbell, during the progress of the enterprise, as a "security" in case he should faithfully perform, execute and carry out the duties and conditions of the contract," but that disputes have arisen between the parties as to the status of the accounts between them, which disputes, it is alleged, were caused by the refusal of Campbell to give them full information concerning the receipts and expenditures of the building operations, and that, notwithstanding his refusal to give this information, Campbell has declined to join in the execution of deeds in selling lots in furtherance of the enterprise unless he is paid out of the proceeds what he arbitrarily and wrongfully, it is alleged, claims to be due him by reason of alleged disbursements for the benefit of the enterprise.

The prayers of the bill are—

(1) That the deed to Campbell be declared to be a security merely;

(2) That accounting be had:

(3) That the contracts be canceled, and Campbell be required to make proper reconveyance.

The answer of Campbell emphatically denies under oath that the deed to him was made "by way of security"—asserting, on the contrary, "that in consideration of defendant's undertaking as set out in said agreements the said conveyance was made to carry absolute title to defendant." The answer also denies that defendant has in any wise failed to perform any of his obligations under the contracts; and says further that "He has always been willing to and has never refused to account and he is now ready to account as fully and in such manner as may be deemed proper by the Court." The answer then proceeds to take exception to the jurisdiction of this court over the present suit, because, it is said, diverse interests are involved which render the bill multifarious. This objection is not, however, believed to be tenable. An unanswerable response to it would seem to be that, since all of the parties consented to become associated with each other in this joint enterprise, they also necessarily consented that they should be made parties to any controversy within the joint enterprise itself and directly affecting the enterprise itself which might culminate in litigation. This joint enterprise was entered upon practically in the same manner as partnerships are, and it may not be altogether improper to term it a partnership. Difficulties and disputes arose within the enterprise between the partners themselves, and application has simply been made to a court of equity to exercise its ancient jurisdiction for straightening out those differences growing out of a subject-matter which they were jointly interested in developing and concerning the affairs of which they are all entitled to be heard.

Proceeding, therefore, to the merits of the controversy, it is necessary to determine from the evidence whether the deed to Campbell is absolute or merely a security. Such determination is essen-
327 tial before any full and complete accounting can be made, because, without knowing how to treat that instrument, the Auditor would be altogether in the dark as to how he should treat the services of Campbell. If the deed were absolute, necessarily his services would be paid for by it; but if the deed be only a security, then it would be necessary to inquire, in the course of the accounting, what allowance should be made to Campbell, if any, for services rendered by him to the enterprise. Consequently, were a reference to be made to the Auditor in a case such as this, prior to the determination of the question of how the deed should be treated, the precise situation of the parties would not be known, and a further reference, after the determination of that question, might have to be made, to the embarrassment and delay of all parties.

The testimony that has been taken is very voluminous, and, although the question as to whether the deed to Campbell was intended to be absolute or merely a security is very fully covered, most of the testimony is directed to various miscellaneous items which will figure in the general accounting when the case goes to the Auditor, and it certainly appears from that testimony that the accounts of the enterprise are greatly complicated by various errors and disputes concerning those miscellaenous items, which errors and disputes can not be rectified and settled satisfactorily to the parties without a full accounting before the Auditor. The confusion in the accounts seems to have been caused in part by reason of the multiplicity of the transactions in which the parties to this suit have figured respecting the enterprise, and in part by the fact that Campbell in managing the Eckington enterprise employed some of the same material men that he had developed in some of his private enterprises and the bills rendered were in some cases applied to the wrong property.

Before considering the testimony upon the specific question of whether the deed to Campbell was intended to be absolute or merely a security, it may be well to advert to the precise character of the enterprise itself and the situation of the parties and the property at the time when it was entered upon, because, although the parties hereto seem to have hopelessly differed respecting many immaterial matters in this connection, the main facts very clearly appear from the testimony.

Prior to the passage of the Union Station Act of 1901, the prospects for this property were not promising. It was encumbered by an indebtedness approximating $32,000, and, although taxes and interest were steadily falling due, the property could not itself take care of the same because it was producing no income, and the holder of the trust had become very much dissatisfied with the condition of affairs and expressed her dissatisfaction in written communications to the owners of the property. In fact, so precarious had the situation become, that at one time the owners of the property actually executed an absolute deed in favor of the holder of the trust which they seriously contemplated delivering to her in full satisfaction of the in-

debtedness. It was, therefore, a great relief to all parties when Congress took up for serious consideration the question of railroad improvements and proposed to expend large sums of money for
328 such purpose in the immediate vicinity of this property. The great concern therefore felt by the holder of the trust for her loan subsided, and the owners of the property began to see some prospects of making something of their property. It was at this juncture that Campbell was brought in. He was recognized as a skillful builder, and it was regarded as very essential to the development of the property to associate him in whatever enterprise might be undertaken. It is unimportant whether Daniel suggested to Campbell that he associate himself with the enterprise, or whether Campbell suggested the same to Daniel. It is also unimportant whether the conversation between Daniel and Campbell took place in the Fall of 1901 or in the Winter of 1901 at New York. It is sufficient that the parties recognized the advisability of associating with each other in the joint enterprises, and became associated in it. They first proposed to erect sanitary dwellings upon the property, and under date of March 13, 1902 an agreement was entered into providing for the organization of a Sanitary Dwellings Company, the property to be sold to such Company upon its organization, and Campbell to have a third of the amount realized from such sale "whether of money, stock or property." Thereupon, Campbell proceeded diligently in the organization of the Sanitary Dwellings Company, the same being known as the Washington Sanitary Dwellings Co. (incorporated in March 1902 under the laws of Virginia), prospectus of the Company was issued to the public, and diligent efforts made to sell sufficient of the stock of the Company to raise a fund for the taking over of the property and the prosecution of the sanitary buildings enterprise. An arrangement was made with the holder of the trust whereby she obligated herself to release lots and parcels of ground from time to time upon the payment to her of a certain proportion of the proceeds, and Campbell, on June 19, 1902, himself advanced $500 required by the holder of the trust to be paid thereon in consideration of her so obligating herself; and, in fact, the plans for the prosecution of the sanitary dwellings enterprise proceeded so far that a deed to the Company was executed, ready to be delivered upon the raising of sufficient funds by it to purchase the property. It further appears that on June 19, 1902, the date when Campbell advanced the $500 for the holder of the trust, a further memorandum agreement was entered into by the parties to this cause, reciting—

"That the Company which said Campbell agreed to organize, as stipulated in said agreement, has been organized to our satisfaction; that the deed conveying said property to said Company has been prepared and properly executed and that the five hundred dollars which said Campbell this day advances to meet the requirements of the holder of the deed of trust on said property, is done upon acceptance of the above facts. Said transfer will be made upon the terms of acceptance noted in the minutes of the Sanitary Dwellings Co. which are accepted. All monies advanced by said Campbell in handling

the property in question shall be returned *returned* to him out of first sales.

And all rights of said Campbell under said agreement of March 13, 1902, shall remain unimpaired."

329 This further memorandum agreement was formally signed by Daniel, individually, by Campbell individually, and by the Northwest Eckington Improvement Co. per Daniel as Secretary. Redman, however, did not formally sign this memorandum agreement, but this is a matter of no great importance, as it appears from the testimony that Daniel acted in these matters as well for Redman as for himself, and Redman himself frequently stated that Daniels was authorized to act for him (p. 42 defendant's testimony).

Further efforts were made to sell stock of the Dwellings Co., and Campbell was put to considerable expense in connection with the affairs of the Company, but the efforts were not successful, and in October 1902 the parties decided to abandon the sanitary dwellings enterprise, and to themselves develop the property, without the intervention of any Company. Accordingly, the parties, under date of October 23, 1902, entered into a further agreement, as follows:

"Whereas a contract was entered into March 13 1902, between T. C. Daniel and S. C. Redman and the Northwest Eckington Improvement Co., a corporation, and C. M. Campbell, stipulating for the services of said Campbell, it is further agreed, while preserving to said Campbell any rights he may have under said contract, as follows:

1. In consideration of the services said Campbell has already performed and for the purpose of securing his further services and cooperation in the handling and improvement of said property, it is agreed to make certain extension of the provisions of said contract.

2. It is now decided to release the Sanitary Dwellings Company, if necessary, from any obligations it may have assumed in regard to any agreement to purchase said property.

3. The said Daniel, Redman and the Northwest Eckington Improvement Company have decided to improve and market said property, as fast as may be possible, by building houses thereon.

4. To this end they desire to utilize the skill of said Campbell as a builder and his assistance financially.

5. It is agreed by said Daniel, Redman and the Northwest Eckington Improvement Company to employ said Campbell as a skillful builder in the erection of said houses, he to take charge of said work, with such assistance as the other parties to this contract may be able to furnish, and pursue such work industriously and with all the ability and skill he can bring to the work.

6. In the borrowing of the money that may be needed in developing said enterprise he is to use his credit by joining the other parties to this contract in the making or endorsing of any notes that may be required in negotiating the necessary loans for the making of said improvements and in paying off the loan of $32,000 now due on said property. In doing this account is to be taken of all moneys and interest he has already advanced under contracts in relation to said property already entered into between the parties

hereto. And any sums advanced or to be advanced by any of said parties for the same purpose under said agreement is likewise to be accounted for.

7. It is proposed to erect at once five houses on said property and follow them with others as soon as such a course is warranted
330 by the results and approved by the judgment of the parties to this agreement, said Campbell to industriously push said improvements with his best skill and ability, as provided in paragraph 5 herein, without any further compensation for his services than are provided for herein.

8. In return for said undertaking on said Campbell's part he is to become possessed of an undivided one-third interest in said property."

Thereupon arrangements were made to release the five lots on which the five houses were to be built from the deed of trust, and a loan was raised to proceed with the construction of the houses, a certain portion of the loan being paid to the holder of the blanket trust as required by her. The work on the houses was proceeded with, and up to Dec. 10, 1902 Campbell advanced altogether, including the Sanitary Dwellings Company, considerable moneys, stated by him to aggregate $2094.62. Campbell at this date came to the conclusion that he was proceeding in this enterprise in rather an unbusinesslike way, his undivided third interest in the property not having been deeded to him, and, moreover, no definite time having been fixed upon as to when his undivided third interest would be deeded. So he presented an agreement to his associates for execution embodying the following stipulation—

"The said Corporation party hereto agrees to execute at once a conveyance of said undivided one-third interest to said Charles M. Campbell in fee simple."

telling them that he must either have this agreement executed or in lieu thereof the deed itself—"I told them that I preferred to lose what I had put into it than to go on without either a contract or a deed." (P. 196 of defendant's testimony.) Several days were spent in the discussion of this matter, and finally it was promised that the deed would be executed, and Campbell proceeded with the work (p. 197 of defendant's testimony)—the deed being actually executed and delivered on January 16, 1903.

The construction of the first five houses was completed, and then the construction of another row of five houses was proceeded with in substantially the same manner and completed. From time to time during such construction various sums of money had to be paid out and various obligations incurred—notes, bearing the signatures of the various parties, being discounted to raise cash etc. etc. And finally the parties began to dispute among themselves as to who should advance the further funds required to pay the debts incurred in the enterprise, Campbell claiming that he had already advanced more than his share and that in the future he did not propose to advance more than one-third on the payment of obligations, and the other parties claiming that he still had in his hands moneys belonging to the enterprise and should pay that toward the discharge of the

obligations. The construction of the further houses (after the erection of the first five) contemplated by the agreement of Oct. 23, 1902 was, in that agreement, expressly made conditional upon "such a course" being "warranted by the results and approved by
331 the judgment of the parties to this agreement," and as such a course has not been determined upon by the parties to the agreement, no further houses have been constructed, although several parcels of land have been sold instead. It is argued by the solicitor for complainants that Campbell was obligated to build forty houses upon the property, at least, and that he has wholly failed to carry out his undertakings in this connection. But the testimony does not bear out this contention. The testimony shows that various plans were considered and discussed by the parties. They figured up the cost of building five, ten, twenty, or forty houses; and they also figured up how the property could be used for the sale of warehouse sites and made a plat to illustrate same. They contemplated merely the development of the property, in a word, in such manner, from time to time, as might be approved by the judgment of the parties—whether, at one time, to sell a lot or parcel, at another time to sell a warehouse site, or at other times to build houses. Moreover, it would seem to appear from the testimony that an almost insurmountable barrier to the construction of further houses was that of the funds necessary to be raised for such purpose.

Coming now to the specific question of whether the deed to Campbell was intended to be absolute or merely as security, there are but two witnesses testifying about it. One is Daniel, who says that it was understood to be only as security, and that thereafter in July 1903 Campbell for the second time presented the proposed contract of Dec. 10, 1902 providing for a conveyance to him of an undivided third interest in fee simple, and said that his attorney advised that it be executed. The other is Campbell, who says that the deed was intended to be absolute, and that the proposed agreement of Dec. 10, 1902 was never presented to Daniel after the execution of the deed. In this state of the case, it may be inquired what light the circumstances of the case throw upon this question; but such inquiry would seem rather to bear out, if anything, the position of Campbell than that of Daniel. Campbell and the other parties went into the joint enterprise to endeavor by their conjoint efforts to make something out of a piece of property which was heavily encumbered and becoming more and more encumbered every day, because it could not take care of the fixed charges upon it continually arising. They all recognized that something might be made out of the property, if diligent effort was made to develop it, but the hope of making anything out of it seemed to reside more in diligent efforts to be made than in the property itself. Accordingly, the joint enterprise was undertaken. They all joined together, Campbell being joined because of his skill as a builder in addition to his general business ability and the assistance which he might give, together with the others, in the way of making and endorsing notes; and the other parties being joined to contribute to the enterprise, the property which it was sought to so develop as to make it a success, instead of

the failure which it had theretofore been, as also to contribute their general business ability. In such an arrangement, it certainly was not unreasonable to give Campbell a status as the owner of
332 an undivided interest in the enterprise. On the contrary, it would have been rather unusual and unreasonable to treat him in any other manner, because he was, by virtue of the contract, made a sharer in the failure as well as in the success of the enterprise. He stood to lose as well as to gain, and in the event of loss nothing whatever could be reaped by him for his contribution of skill and money.

But even if the circumstances in the case could be construed as in some manner tending to support the position of the complainants, certainly it could not be said that they are of a strength equal to the testimony of a witness, which would be required in order to establish the complainants' position, they not having waived by their bill answer under oath, and the defendant having answered under oath. In the case of Vigel *v.* Hopp, 104 U. S., 441 (which went up from this District), the Supreme Court of the United States said:

"This is a suit in equity begun by the appellee to set aside a deed executed by her to the appellant, on the ground that the deed, though absolute on its face, was intended only as security * * * The answer denies every allegation of fraud and trust, and insists that the deed was intended as an absolute conveyance, and not as a security. This is responsive to the bill, and before the relief can be granted which is asked, these denials must be overcome by the satisfactory testimony of two witnesses, or of one witness, corroborated by circumstances which are equivalent in weight to another. 2 Story Eq. sec. 1528. The appellee is the only witness in support of the bill, and the corroborating circumstances are not, in our opinion, sufficient to overcome the answer. It will serve no useful purpose to enter into analysis of the testimony.

The decree is reversed, and the cause remanded with instructions to dismiss the bill."

The prayers of the bill asking that the deed to Campbell be declared to be a security merely, as also those asking for the cancellation of the contracts, will, therefore, under the evidence and the authority cited, have to be denied. But the cause will be referred to the Auditor for a full accounting between the parties respecting the affairs of the joint enterprise.

THOS. H. ANDERSON, *Justice.*

Decree.

Filed January 4, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 24463.

NORTHWEST ECKINGTON IMPROVEMENT COMPANY et als.
vs
CHARLES M. CAMPBELL.

This cause coming on to be heard upon the pleadings and proofs, and having been argued by counsel and considered by the
333 Court, it is, this 4th day of January A. D. 1906, adjudged, ordered and decreed:

That, in so far as the bill herein seeks a cancellation of the agreements dated March 13, 1902 and October 23, 1902, and a reconveyance from the defendant, the same be, and it is hereby, dismissed;

That, in so far as the bill herein seeks an accounting respecting the affairs of the enterprise, the cause be, and it is hereby, retained; and the cause is hereby referred to the Auditor of this Court for a full and complete accounting between the parties respecting all the affairs of the enterprise, and including that portion of the enterprise known as the Sanitary Dwellings Company.

The question of costs in this cause is reserved until the coming in of the Auditor's report upon said accounting.

THOS. H. ANDERSON, *Justice.*

From the above decree, the complainants pray, and are hereby allowed, an appeal to the Court of Appeals; and the penalty of the bond for costs in such appeal is fixed at one hundred dollars ($100).

THOS. H. ANDERSON, *Justice.*

It is further ordered by the Court, to the end that the *status quo* in this cause may be preserved pending the aforesaid appeal, that proceedings in the accounting before the Auditor directed by the foregoing decree be suspended until said appeal shall have been disposed of, or until the further order of this Court.

THOS. H. ANDERSON, *Justice.*

Memorandum.

January 15, 1906.—Appeal Bond filed.

Order Extending Time to Prepare Transcript.

Filed February 23, 1906.

In the Supreme Court of the District of Columbia.

#24463, Equity Doc. 54.

NORTHWEST ECKINGTON IMPROVEMENT CO. et al.
vs.
CHAS. M. CAMPBELL.

Upon consideration of the motion of the complainants & by consent of the defendant, it is by the Court this 23rd day of February A. D. 1906, ordered that the time within which the transcript of the record of this cause on the appeal taken herein by the Complainants, should be prepared & filed in the Court of Appeals, be & the same is hereby extended 30 days from this date.

HARRY M. CLABAUGH.

Correct:
JNO. RIDOUT, *For Def't.*

334 *Designation to Clerk for Preparation of Transcript.*

Filed March 19th, 1906.

In the Supreme Court of the District of Columbia.

No. 24463. Equity Court.

NORTHWEST ECKINGTON IMPROVEMENT COMPANY et als.
vs.
CHARLES M. CAMPBELL.

John R. Young, Esq., clerk of court:

In conformity with sub-section *g*, section 1 of rule 5 of the Court of Appeals, we hereby request that you will, in making the transcript of the record on the appeal taken by the complainants in the above entitled case, insert and omit the papers, testimony and exhibits as indicated below:

Insert:

1. Bill of complaint and exhibits 1 and 2 thereof.
2. Answer of the defendant and exhibit 1.
3. Replication.
4. All of complainants' testimony in chief excepting so much as is indicated in the accompanying stipulation of counsel in the case.
5. All of defendant's testimony in chief excepting so much thereof as is indicated in the aforesaid accompanying stipulation.
6. All of complainants' testimony in rebuttal except so much thereof as is excepted in the aforesaid accompanying stipulation.
7. All of defendant's testimony in sur-rebuttal.

8. Opinion of the Court.
9. Decree.
10. Appeal.
11. Memorandum of appeal bond.

RALSTON & SIDDONS,
Solicitors for Complainants.

Stipulation.

Filed March 19th, 1906.

In the Supreme Court of the District of Columbia.

No. 24463. Equity Docket.

NORTHWEST ECKINGTON IMPROVEMENT COMPANY et al.
vs.
CHARLES M. CAMPBELL.

It is hereby stipulated and agreed by and between the parties to the above entitled cause through their respective solicitors,
334*a* that in making up the record on the appeal taken by the complainants herein from the decree of the court below, the Clerk shall omit from the complainants' testimony in chief complainants' exhibit to testimony No. 2 and, in lieu thereof shall insert complainants' exhibit to testimony in rebuttal, No. 13.

The Clerk shall omit complainants' exhibit to testimony No. 8 (plat), page 38, it being hereby stipulated and agreed that such *pray* may be exhibited to the Court of Appeals in the argument thereof and referred to, if desired, in the respective briefs of counsel.

That in lieu of copying into the record the checks offered in evidence passing between the defendant Campbell and the Complainant Daniel, beginning on page 41 of complainants' testimony in chief, there shall be inserted a memorandum showing merely the dates, amounts, maker and payee of said checks.

That in lieu of copying into the record the notes protested and unpaid referred to in the testimony beginning on page 46 of the complainants' testimony in chief, the Clerk shall insert a memorandum showing the makers and payees of said notes, their date, the time for which they were to run and those protested.

The Clerk shall omit from defendant's testimony in chief his page 85, being the testimony of S. Brooke Daniel.

The Clerk shall omit from defendant's testimony in chief his cross-examination beginning on page 133 of his testimony in chief after the words "I cannot recall" down to and including the words "the two firms" on page 139.

In lieu of copying the checks produced by defendant and referred to on pages 177, 201 and 210 of his testimony in chief, the Clerk shall insert the statement of said checks prepared by the examiner under agreement of counsel.

In lieu of the estimates offered in evidence beginning on page 180 of the defendant's testimony in chief, the Clerk shall insert a memorandum giving the name of the maker of the estimates, the date, the amount thereof and for what.

In lieu of the checks offered in evidence relating to the $2000 discount on page 198 of defendant's testimony in chief, the Clerk shall insert a memorandum giving the maker and payee of these checks, their dates and amounts.

In complainants' testimony in rebuttal, omit complainants' exhibit rebuttal No. 2 page 181.

In lieu of copying the deed from the Improvement Company to the Sanitary Dwellings Company offered in evidence on page 183, the Clerk shall insert a memorandum briefly stating contents of the deed.

In lieu of copying the certificate of title offered in evidence on page 183, the Clerk shall insert a memorandum briefly stating the contents of the certificate.

The Clerk shall omit complainants' exhibits rebuttal Nos. 6 and 7 on page 187.

The Clerk shall omit complainants' exhibit rebuttal No. 8 on page 213.

334*b* The Clerk shall omit complainants' exhibits No. 9 on page 214.

The Clerk shall omit complainants' exhibit rebuttal No. 14 page 217.

The Clerk shall omit complainants' exhibit rebuttal No. 13, offered in evidence on page 217, it having been inserted in lieu of complainants' exhibit to testimony in chief No. 2 on page 7 of his testimony in chief.

RALSTON & SIDDONS,
Solicitors for Complainants.
JOHN RIDOUT,
Solicitor for Defendant.

335 *Stipulation as to Record on Appeal.*

Filed March 27, 1906.

In the Supreme Court of the District of Columbia.

No. 24463.

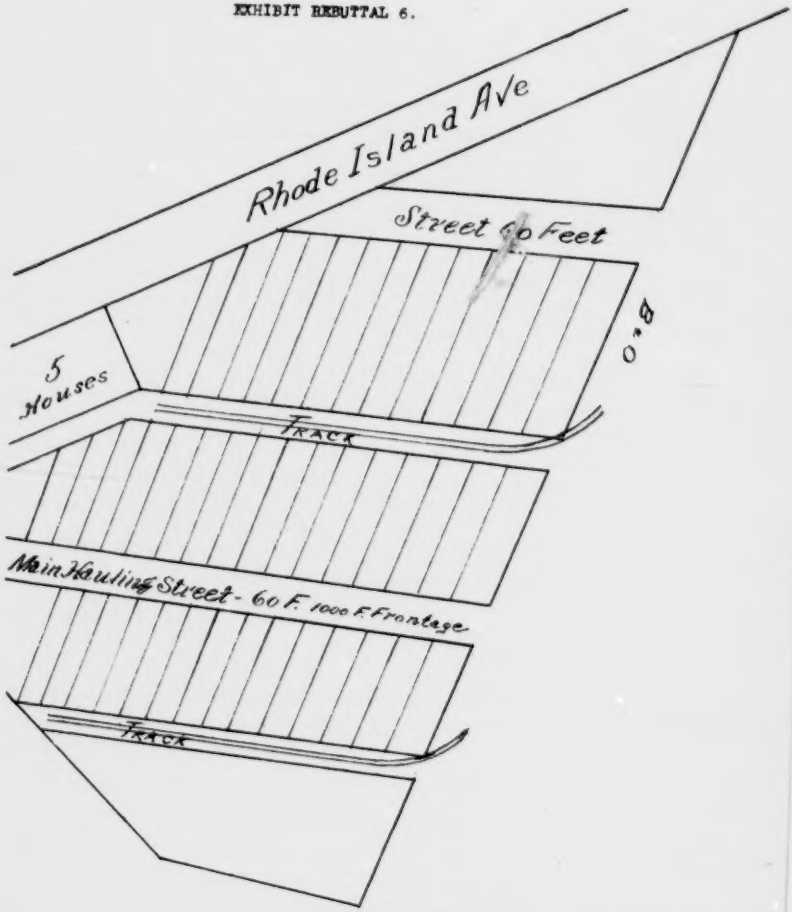
NORTHWEST ECKINGTON IMPROVEMENT COMPANY et al.
vs.
CHARLES M. CAMPBELL.

It is hereby stipulated and agreed by and between the parties to the above entitled cause through their respective solicitors, that in lieu of inserting complainants' exhibit to testimony in rebuttal No. 13, as provided in the previous stipulation between the parties, the said exhibit may be exhibited to the Court of Appeals in the argument of this case in that court and referred to, if desired, and as may be advised in the respective briefs of counsel.

RALSTON & SIDDONS,
Solicitors for Complainants.
JNO. RIDOUT,
Solicitor for Defendant.

(Here follows diagram marked page 336.)

EXHIBIT REBUTTAL 6.



Room for 50 Warehouses--Twice as Many as the town will support in 25 years. The row next to Malnetta will be more than the Demand will require, leaving remainder of ground in best shape possible,--especially R.I.Ave.

337 *Mandate.*

Filed Jan. 4, 1907.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Justices of the Supreme Court of the District of
[SEAL.] Columbia, Greeting:

Whereas, lately in the Supreme Court of the District of Columbia, before you or some of you, in a cause between Northwest Eckington Improvement Company, a corporation, Samuel C. Redman, and T. Cushing Daniel, Complainants, and Charles M. Campbell, Defendant, Equity No. 24,463, wherein the decree of the said Supreme Court entered in said cause on the 4th day of January, A. D., 1903, is in the following words, viz:

"This cause coming on to be heard upon the pleadings and proofs, and having been argued by counsel and considered by the Court, it is this 4th day of January A. D. 1906, adjudged, ordered and decreed:

"That in so far as the bill herein seeks a cancellation of the agreements dated March 13, 1902 and October 23, 1902, and a reconveyance from the defendant, the same be, and it is hereby dismissed;

"That in so far as the bill herein seeks an accounting respecting the affairs of the enterprise, the cause to be, and it is hereby,
338 retained; and the cause is hereby referred to the Auditor of this Court for a full and complete accounting between the parties respecting all the affairs of the enterprise, and including that portion of the enterprise known as the Sanitary Dwellings Company:

"The question of costs in this cause is reserved until the coming in of the Auditor's report upon said accounting.

THOS. H. ANDERSON, Justice."

"From the above decree, the complainants pray, and are hereby allowed an appeal to the Court of Appeals; and the penalty of the bond for costs in such appeal is fixed at one hundred dollars ($100).

THOS. H. ANDERSON, Justice."

"It is further ordered by the Court, to the end that the status quo in this cause may be preserved pending the aforesaid appeal, that proceedings in the accounting before the Auditor directed by the foregoing decree be suspended until said appeal shall have been disposed of, or until the further order of this Court.

THOS. H. ANDERSON, *Justice.*"

as by the inspection of the transcript of the record of the said Supreme Court, which was brought into the Court of Appeals of the District of Columbia by virtue of an appeal, agreeably to the Act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of October in the year of
339 our Lord one thousand nine hundred and six, the said cause came on to be heard before the said Court of Appeals on the said transcript of record, and was argued by counsel:

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that so much of the decree of the said Supreme Court appealed from in this cause be, and the same is hereby, reversed with costs and vacated; and that the said complainants recover against the said defendant Charles M. Campbell four hundred and twenty-two dollars and ninety cents for their costs herein expended and have execution therefor.

And it is further ordered that this cause be and the same is hereby, remanded to the said Supreme Court with direction to enter a decree declaring the true intent and purpose of the deed of January 16, 1903, as indicated in the opinion of this court.

DECEMBER 14, 1903.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and decree of this Court as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Seth Shepard, Chief Justice of said Court of Appeals, the fourth day of December in the year of our Lord one thousand nine hundred and six.

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Costs of Complainants:

Clerk	$44.40
Attorney	5.00
Printing Record	373.50
	$422.90

Record	183.50
	606.40

340 *Decree on Mandate.*

Filed Jan. 18, 1907.

In the Supreme Court of the District of Columbia.

No. 24463. Eq. Doc.

NORTHWEST ECKINGTON IMPROVEMENT COMPANY et al.
vs.
CHARLES M. CAMPBELL.

It appearing to the Court by the mandate of the Court of Appeals of the District of Columbia, filed herein on the 4th day of January, A. D. 1907, that that court ordered that so much of the decree of this court passed herein on the 4th day of January, A. D., 1906, which ordered and decreed the dismissal of so much of the bill of complaint filed herein as sought a cancellation of the agreements dated March

13, 1902, and October 23, 1902, and a re-conveyance by the defendant Campbell, of the undivided third interest in the property conveyed to him by the deed from the complainant company, dated January 16, 1903, and recorded among the Land Records of the District of Columbia on January 19, 1903, in Liber 2707, folio 130 et seq., and referred to in the 5th paragraph of the bill of complaint filed herein, be reversed with costs and vacated, and further remanded the cause to this Court with directions to enter a decree declaring the aforesaid deed to be merely a conditional one, dependent upon the performance of the agreement in accordance with which it was made, therefore, in obedience to and in accordance with said mandate, it is, by the Court this 18" day of January, A. D.
341 1907, adjudged, ordered and decreed that so much of the decree heretofore passed in this cause on the 4th day of January, A. D. 1906, dismissing so much of the bill of complaint as seeks the cancellation of the aforesaid contracts of March 13, 1902, and October 23, 1902, and a re-conveyance from the defendant to the complainant company be, and the same is hereby, vacated, set aside and for naught held, with costs to be recovered by the complainants against the defendant Campbell, as adjudged in the aforesaid mandate, and the costs on the appeal incurred or accrued in this Court, to be taxed by the Clerk thereof; said complainants to have execution therefor.

And it is further adjudged, ordered and decreed, that the aforesaid deed of January 16, 1903, be, and the same is hereby, declared to be merely a conditional one, dependent upon the performance of the agreement in accordance with which it was made, as indicated in the opinion of the Court of Appeals in disposing of the aforesaid appeal.

HARRY M. CLABAUGH,
Chief Justice.

Auditor's Report.

Filed Dec. 19, 1908.

By the decree passed in this cause on the Fourth of January, 1906, it was referred to the Auditor for a full and complete accounting between the parties respecting all the affairs of the enterprise and including that portion known as the Sanitary Dwellings Company.

342 The Complainant, Northwest Eckington Improvement Company was the owner of land described as lot 35 in a tract called "Metropolis View" in the District of Columbia and comprising about ten acres. The business for which the company was incorporated was dealing in real estate, buying improving, and selling, and the complainants, Redman and Daniel were respectively President and Secretary of the Company. At the time of the inception of the transactions between the complainants and defendant relative to this property, the land was subject to a deed of trust securing notes of T. C. Daniel for $35,700.00. About the month of March 1902

negotiations commenced between these parties, and on the 13th of March 1902 they entered into the following agreement:

"Whereas T. C. Daniel and S. C. Redman, of Washington D. C., acting for themselves and the Northwest Eckington Improvement Company of the District of Columbia, a Corporation incorporated under the laws of the State of Virginia, are owners of a tract of land in Northwest Eckington subject to trust, interest and taxes, fully described by the plats and printed matter of the above company, consisting of ten and half acres more or less, desire to dispose of the same they hereby agree with C. M. Campbell, of Washington, D. C. in consideration of one dollar in hand paid by him and other valuable consideration, that if he will organize or be instrumental in organizing a company, even with the assistance of T. C. Daniel or others, for the purchase of said ground, and give the necessary time and attention to that end, they agree, in case his plans
343 work out so that they accept the consideration said company offers for said ground, to give him a third of the amount they receive whether of money, stock or property, and that in the event of such sale or disposition of said property he is to become possessed of an undivided one-third interest in the property. In case less than the whole tract is sold then said Campbell is to become possessed of an undivided one-third interest in the amount sold."

Following this agreement and apparently in execution of its intended purpose an effort was made to organize another corporation under the title of the Sanitary Dwellings Company for the purpose of constructing on the land in question a number of dwellings built and equipped in a sanitary manner and to be sold or rented.

On the 16th of June 1902 as part of an agreement with the holder of the trust indebtedness for procuring releases of lots or parcels of the property, as improvements and conditions might require, the defendant advanced from his own funds $500.00 which was paid on account of said indebtedness.

On the same day a further agreement was entered into by the parties to this cause as follows:

"That the Company which said Campbell agreed to organize, as stipulated in said agreement, has been organized to our satisfaction; that the deed conveying said property to said company has been prepared and properly executed and that the $500.00 which said Campbell this day advanced to meet the requirements of the holder of the deed of trust of said property, is done upon acceptance
344 of the above facts. Said transfer will be made upon the terms of acceptance noted in the minutes of the Sanitary Dwellings Company which are accepted. All moneys advanced by said Campbell in handling the property in question shall be returned *returned* to him out of first sale.

And all rights of said Campbell under said agreement of March 13, 1902, shall remain unimpaired."

The said enterprise was abandoned by the parties to the agreement and on the 23rd of October 1902, the parties entered into a further agreement as follows:

"Whereas a contract was entered into March 13th 1902 between

T. C. Daniel and S. C. Redman and the Northwest Eckington Improvement Company, a corporation and C. M. Campbell, *stipulating for the services* of said Campbell, it is further agreed while preserving to said Campbell any rights he may have under said contract, as follows:

1. In consideration of the services said Campbell has already performed and for the purpose of securing his further services and cooperation in the handling and improvement of the said property, it is agreed to make certain extension of the provisions of said contract.

2. It is now decided to release the Sanitary Dwellings Company if necessary, from any obligation it may have assumed in regard to any agreement to purchase said property.

3. The said Daniel, Redman, and the Northwest Eckington Improvement Company have decided to improve and market said property, as fast as may be possible, by building houses thereon.

4. To this end they desire to utilize the skill of said Camp-
345 bell, as a builder and his assistance financially.

5. It is agreed by said Daniel, Redman and the Northwest Eckington Improvement Company to employ said Campbell as a skillful builder in the erection of said houses, he to take charge of said work, with such assistance as the other parties to this contract may be able to furnish, and pursue such work industriously and with all the ability and skill he can bring to the work.

6. In the borrowing of the money that may be needed in developing said enterprises he is to use his credit by joining the other parties to this contract in the making or endorsing of any notes that may be required in negotiating the necessary loans for the making of said improvements and in paying off the loan of $32,000.00 now due on said property. In doing this, account is to be taken of all monies and interest he has already advanced under contracts in relation to said property already entered into between the parties hereto. And any sums advanced or to be advanced by any of said parties for the same purpose under said agreement is likewise to be accounted for.

7. It is proposed to erect at once five houses on said property and follow them with others as soon as such a course is warranted by the results and approved by the judgment of the parties to this agreement, said Campbell to industriously push such improvements with his best skill and ability, as provided in paragraph 5 herein, without any further compensation for his services than are provided for herein.

8. In return for said undertaking on said Campbell's part he
is to become possessed of an undivided one-third interest in
346 said property.

The next step in the enterprise was the making of an agreement on the 2nd of December 1902 between Daniel, Campbell and Redman of the first part and Eleanora T. Franz of the second part, reciting that Mrs. Franz was the holder and owner of three notes in the sum of $12,500.00 each made by Daniel July 25th 1891 secured by deed of trust of the said lot 35 and on which notes there was due in principal and interest $37,938.66 and that she agreed to release

from said trust, a part of said lot fronting 100 feet on the north side of Rhode Island Avenue in consideration of the undertaking by the parties of the first part to pay to her the sum of twenty-five cents per square foot for the land so to be released, such payment to be credited upon the said notes of Daniel, also that they should erect within six months complete, five houses or dwellings upon the land so released to cost not less than $3000.00 each also to pay at the time of the execution of such deed of release all taxes and assessments on so much of said lot 35 as not theretofore sold and conveyed by the Northwest Eckington Improvement Company by recorded deeds.

The parties of the first part also guaranteed the further payment of the said notes of Daniel according to their terms with interest. It was further agreed that the time of payment of said notes is extended to December 12th 1904 or before, with interest at 6 per cent.

The Northwest Eckington Improvement Company then conveyed to Daniel, Campbell and Redman, the five lots referred to in the agreement with Mrs. Franz and thereupon the said three
347 parties united in an application for a loan of $12,500.00 upon their promissory note secured by deed of trust of the five lots. This trust was recorded on the 6th of December 1902. The application was made through the firm of F. H. Smith and Company and made pay-ble in instalments as set forth in the statement of the said firm, pp. 286 and 287 of the printed record. The first instalment of $2,500. was practically exhausted b yexpenses, commission and payment to Mrs. Franz for her release according to the contract of December 2nd 1902.

The amount received by Campbell was $25.75. This instalment was received on the 12th of December 1902 and the remaining instalments, four in number, at various dates from December 26th 1902 to May 26th 1903.

Before receiving the first instalment Campbell had paid $500. on the indebtedness to Mrs. Franz and $122.91 and $957.55 for taxes. Out of the first loan, he also paid $300 to purchase a lot which had been sold, this purchase being required by the title company before reporting favorably on the application for the loan.

These amounts do not include monies advanced by Campbell in payment of expenses incurred in relation to the sanitary Dwellings enterprise.

The construction of five buildings was then commenced and prosecuted. The second building loan was negotiated in April 1903 in the same manner as the first loan, conveyance of five lots being made to Daniel, Campbell and Redman, who then made a joint application for the loan of $12,500. on the notes made by the three parties and secured upon the said five lots. The first instalment of this loan $2,500. was not sufficient to pay Mrs. Franz the
348 amount for a release of the lots which was $2,519.04 in addition to which taxes, expenses and commissions were paid amounting to nearly $400.00 which was furnished by Campbell from proceeds of the first loan then in his hands.

Work was then commenced on second five dwellings.

The other instalments of the second loan were payable at specified dates ending with October 26th 1903.

In the meantime at the request of Campbell, the complainants on the 16th of January 1903, executed and delivered to him a deed conveying an undivided one-third interest in the property.

About November 1903 a sale of a portion of the land to Antonio Malnati was negotiated and consummated some time prior to January 1904. The amount of this sale was $15,200.00. Campbell demanded a portion of this fund as the owner of a one-third interest and controversy ensuing between him and the complainants, an agreement was made by which the fund was deposited in the hands of Judson T. Cull. The agreement also provided for the payment of $6,000. on the Franz trust and taxes then due. $4,000 was to be paid by Cull on claims outstanding and the remainder of the fund paid one-third to Campbell and two-thirds to the Northwest Eckington Improvement Company. Pursuant to this agreement Campbell received $1,686.54 and the improvement company double that amount. The complainants reserved the right to contest thereafter the said claim of Campbell.

Subsequently a second sale covering another portion of the property was made to the same purchaser for the sum of $3,310.50 of which $500 was paid to T. C. Daniel, $1,893.79 on Franz
349 trust, some taxes and expenses and the remainder to claims incurred in construction.

The controversies arising out of these transactions increased until the bill of complaint in this cause was filed on the 8th of February 1904.

The original decree for accounting was based upon the theory of a joint ownership in the property. This condition was practically suspended by the decree of the Court of Appeals and the case came to the Auditor with the defendant as the accounting party. The complainants have no account to state except in the way of charges against the defendant, such charges as may intelligently advise him and the Court with what funds or property of the complainants he is chargeable.

The complainants have filed here eight papers marked exhibits 1 to 6 inclusive, 3*a* and 6*a* containing statements most of which are not material to the account and some not in accordance with the facts.

Exhibit 1, purports to be a statement of payments by the complainants on account of the construction of the houses. There are several items which have no relation to the construction besides other errors which I need not discuss as I do not find it requisite to state such an account further than to say that as the matter now stands the complainants are to be treated for the present as the owners of the property and that so far as the account of the defendants does not show the entire expenditures, they are to be considered as having been paid by the complainants from sales or loans or private sources.

350 Exhibit No. 2 purports to show what money the defendant has received on account of the building enterprise December

31, 1903. The first item charges him with "loans $25,000." and no credits are given. This statement as it stands is misleading, it being well known to the complainants that the only money received by the defendant from both loans was $19,629.81 (see Exhibit, rebuttal 10 and 11 printed record and the testimony of Daniel.)

In order that the Court may be informed of the actual conditions, I shall state an account, charging the defendant with his actual receipts and crediting his expenditure of construction and payments made for the complainants.

Exhibits 3, 3*a*, 4 and 5 are of no material aid to the statement of the account which should be made from the proofs submitted.

Exhibit 6 is subject to a like criticism and it may be pertinent to suggest that while it purports to be limited to cost of construction, it includes payments to Mrs. Franz on the original trust indebtedness, taxes and other items not in any manner relating to the construction account.

Exhibit 6*a* purports to show increased cost of construction over the alleged estimates. I do not understand whether the complainants seek to charge the defendant in the accounting with this alleged excess but as one of the grievances set forth by the complainants in their testimony and arguments is that the cost of construction materially exceeded the estimate of Campbell before it was determined to build, it will be in order to consider that subject.

351 In the testimony the parties differ as to the alleged original estimate, the complainants stating it as $31,300. for ten houses, while the defendant denying that any binding estimate cost was made fixes the amount which was considered, at $33,000. and this is corroborated by the averment of the bill of complaint in the 6th paragraph.

The result of the accounting shows a moderate increase of cost over $33,000. and the defendant in his testimony (page 79 printed record) describes conditions which created the additional cost, one being the location of the second row of houses, the ground being low and requiring cellars under the dwellings. It also appears that some of the original contractors failed to complete the work for which they were employed necessitating the employment of others and increasing the cost.

Returning to the complainants' charges against the defendant as stated in their exhibit No. 2, the second item Daniel note $600 is referred to in the testimony of Daniel on page 34 printed record. He testifies to having a note discounted and giving the proceeds, $600. to Campbell and subsequently having paid the note himself. He also testifies that he sued Campbell for a balance of the amount and that Campbell paid all but $100 which Campbell refused to pay and that he, (Daniel) intended making it the subject of an *un*dividual suit. It appears in evidence that Campbell sets up a counter claim against Daniel and the $600 should be omitted from the present account.

The next item, Redman note, is referred to in the testimony of the latter on pages 51 and 52. On the latter page he testifies
352 that the amount of the note was paid by Campbell, it is therefore omitted in my statement of the account.

The complainants charge the defendant with $150. as paid A. M. Cowell & Sons at the request of the defendant May 23rd 1903. This amount was repaid by the check to Daniel May 25th 1903, the check being filed as exhibit J. A. L. No. 4 and identified by Daniel in his cross examination, record page 42.

In accordance with these findings I have stated the account in schedule "A" herewith, charging the defendant with his actual receipts of the proceeds of the building loans and other items being refund of deposits with the District and cash from T. C. Daniel.

Against the total of these charges I have allowed credit for monies expended on construction of the ten houses as set forth in schedule "B," the result showing a balance due the defendant on construction account of $3,063.89, the said schedule "B" contains a statement of the said expenditures on account of construction, first of cash payments and second, payments of notes and on account of notes.

In schedule "C" I have stated an account of other payments by the defendant for the complainants. The first three of these items are for the cost of two sewer extensions and a pavement which appear to have been extra work and not a part of the construction of the houses.

On the 16th of June 1902, the defendant paid through T. C. Daniel $500 to Mrs. Franz on account of the original trust indebtedness. Objection is made to this item which is based upon a
353 theory advanced by the complainants in respect of the agreement of March 1902, the complainants asserting its true meaning to be a contract of sale and purchase, whereby it became the exclusive venture of the defendant he assuming all risk and cost, and undertaking to deposit $500 to be forfeited in case of failure.

This theory is contradicted, first, by the general character of the agreement, it lacks two essential requisites of a contract to sell and purchase. No price or terms of payment appear in the document. It was therefore not binding upon either party. The complainants however have furnished a better interpretation in the agreement of October 23rd 1902.

First, in its preamble, which recites the making of the contract of March 13th between the complainants and Campbell "stipulating for the services of said Campbell."

Second, by agreeing to preserve to Campbell any rights he might have under the March agreement.

Then the October contract recites that "in consideration of the services Campbell has already performed and for the purpose of securing his further services and co-operation in the handling and improvement of said property it is agreed to make certain *extensions* of the provisions of the said contract."

The sixth section of the later contract provides that "account to be taken of all monies and interest, he, (Campbell) has already advanced under contracts in relation to said property already entered into between the parties hereto."

354 Evidently the March agreement provided for a joint venture in which the parties assumed the common risk and I find such to be the true meaning of the parties.

This finding will include the next credit in my account for payment of taxes due on the property in June 1902.

In December, 1902, the defendant at the request of the complainants, paid additional taxes amounting to $957.50.

It was also found necessary to repurchase a lot which had been sold by the complainants, and the defendant at their request paid the sum of $300 for that purpose, (see exhibit defendant 13, record 178).

I find the sums set forth in schedule "C" to have been paid by the defendant for the complainants and have transferred the aggregate to Schedule "A" to be added to the balance therein stated as due the defendant on the construction account.

Schedule "D" is a statement of expenditures by the defendant on account of the sanitary dwellings enterprise and what I have stated herein as the true meaning and effect of the March agreement applies to those payments. The aggregate is also added to the summary in Schedule "A."

Schedule "E" is a statement of cost of construction of the ten houses made up from the vouchers and other proofs furnished by the defendant. I am requested by the complainants to state the account of the defendant as of December 31st 1903. This I have done in schedule "F" by using the account stated in schedule "A" and correcting the same by the defendant's expenditures made and credited after that date.

JAS. G. PAYNE, *Auditor.*

355 SCHEDULE A.

The Defendant in Account With the Complainants.

Dr.		
To Amount received from first Building Loan	10,025.75	
Less paid F. H. Smith Co., to supply deficiency of first instalment of second loan	395.74	
	9,629.81	
Second and subsequent instalment of second building loan	10,000.00	
		19,629.81
Total receipts from building loans		19,629.81
Made up from complainants' rebuttal exhibits 10 and 11 pages 286-7 printed record.		
Refund by District, of deposits for sewer etc. $65.00 and $22.01		87.01
Cash from T. C. Daniel		200.00
From Mickel		9.00
		19,925.82

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Cr.		19,925.82
By Expended on construction of ten houses schedule "B"	23,089.80	
Balance due defendant on construction account		3,163.98
	23,089.80	23,089.80
Balance due the defendant as above		3,163.98
From schedule "C"		2,195.96
From Schedule "D"		481.81
		5,841.75
The defendant received in division of proceeds of first Malnati sale (see report herewith)	1,686.54	

JAS. G. PAYNE, *Auditor.*

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SCHEDULE B.

Account of Expenditures by the Defendant for the Complainants on Construction of the Ten Houses.

Paid deposit on sewer	65.00
" Surveyor	24.00
Permit and slater service	38.70
Architects and draughtsman	100.00
Carpenter work	2,752.87
Brick work	8,155.00
Plumbing	1,700.00
Tarring walls	134.50
Blue prints	10.25
Plastering	2,094.92
Painting	540.00
Slating	255.00
Gas Co.	361.50
Lumber and mill work	271.95
358 Cement work	500.00
Hardware & etc.	31.00
Mantels and hearths	262.75
Electric work	90.00
Mosaic work	32.00
Stone work	449.26
Galvanized work	250.00
Window shades	48.10
Grading lots	25.00
Gas fixtures	120.00
Cash payments	18,311.80

Payments of notes and on account of notes as follows:

Cowell & Sons	545.81
William Ward	358.12
J. J. Thompson	48.24
Warren & Dyer	45.05
359 C. E. Hodgkin	86.28
Fahey & Co.	816.55
Thomas R. Riley	1,645.40
Rudolph, West & Co.	1,011.51
M. Roche	119.54
J. H. Keuhling Co.	101.50
	23,089.80

JAS. G. PAYNE, *Ayditor.*

360 SCHEDULE C.

Payments by Defendant for the Complainants.

Cr.

By Paid for sewer extension March 4th, vou. 17	90.00
" The same March 18th, vou. 18	112.00
" For pavement April 10th, vou. 19	68.00
" June 16th 1902, paid on account of indebtedness secured by deed of trust	500.00
" June 26th, paid taxes	122.91
" December 8th, the same	957.55
" The same 31st, cost of lot purchased	300.00
" February 14th 1903, insurance	25.00
" McGill & Wallace	9.00
" June 20th, for advertisement	2.00
" October 7th, tax certificate	.50
	2,195.96

JAS. G. PAYNE, *Auditor.*

361 SCHEDULE D.

Expenditures by Defendant on Account of the Sanitary Dwellings Company.

To J. E. Mitchell	3.50
Incorporation of company	204.00
C. D. Burnley	17.28
" " "	14.40
" " "	15.84
" " "	17.28
" " "	12.86
" " "	15.84
" " "	10.58

Marie Siemers	4.15
C. D. Burnley	11.54
" " "	10.54
" " "	18.00
" " "	10.00
McGill & Wallace	15.00
C. D. Burnley	51.00
" " "	15.00
A. B. Graham	25.00
	10.00
	481.81

JAS. G. PAYNE, *Auditor.*

362

SCHEDULE E.

Cost of Construction of Houses.

Surveyor	24.00
Permit and slater service	38.70
Architects and draughtsman	100.00
Carpenter Work	2,752.87
Brick work	10,456.82
Plumbing	4,277.95
Tarring walls	134.50
Blue prints	10.25
Plastering	2,288.00
Painting	1,514.50
Slating	255.00
Gas Company	361.50
Cement Work	1,316.55
Lumber and Mill work	6,756.54
363 Hardware, tinning, stones	2,400.11
Mantles, Hearths	382.29
Electric work	191.50
Mosaic work	64.00
Stone work	449.26
Galvanized work	392.00
Window shades	48.10
Grading lots	86.50
Gas fixtures	243.57
	34,544.51

JAS. G. PAYNE, *Auditor.*

364 SCHEDULE F.

Account of the Defendant Stated as of the 31st of December, 1903.

Cr.

By Expended on account of construction per schedule "B"	23,089.80	
Less amount expended after above date included in schedule B itemized below	1,198.23	
		21,891.57

Dr.

To Receipts per schedule "A".....	20,025.82
Balance due defendant on construction account...	1,865.75
Add schedule "C".....	2,195.96
Add schedule "D"	481.81
	4,543.52

Payments After Above Date Included in Schedule "B."

January	11, 1904	Rudolph, West & Co	143.45
March	16, "	" " "	36.80
May	9, "	" " "	24.45
"	16, "	" " "	24.11

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May	16, 1904	Thomas R. Riley.....	126.88
"	" "	Rudolph West & Co.	41.78
June	9, "	Thomas R. Riley.....	107.41
"	" "	A. M. Cowell & Sons.....	19.32
"	" "	Rudolph West & Co.	28.92
"	18, "	Thomas R. Riley.....	93.36
"	18, "	A. M. Cowell & Sons.....	42.29
"	29 "	" " " " "	42.27
August	1, "	Ralston & Siddons.....	44.16
Sept.	3, "	Rudolph West & Co.	20.84
"	11, "	Eckington note	18.63
May	18, 1905	A. M. Cowell & Sons.....	49.11
"	" "	Rudolph West & Co.	40.37
August	15,	Eckington note	54.36
Nov.	17, 1905	Ralston & Siddons.....	44.14
Feb.	19, 1906	" " "	35.84
May	19, "	" " "	20.02
"	" "	" " "	16.36
Aug.	22, "	" " "	16.49
"	" "	" " "	20.31
Nov.	19,	Rudolph West & Co.	8.83
Jan.	11, 1907	Nat. Met. Bank.....	63.01
Feb.	16, "	Rudolph West & Co.	8.71
May	16, "	" " "	6.91
			$1,198.23

JAS. G. PAYNE, *Auditor.*

366 *Exceptions to Auditor's Report.*

Filed Jan. 18, 1909.

The complainant, by Ralston & Siddons, their solicitors, except and object to the report of the Auditor filed herein on December 19, 1908, upon the following grounds:

1. For his failure to find, though established by the evidence, that the Sanitary Dwellings Company was organized by the defendant for the purpose of acquiring the land in suit and improving same, although said Company was subsequently abandoned by him.

2. For holding that the defendant, on June 16, 1902, advanced from his own funds the sum of $500 which was paid on account of the underlying mortgage or deed of trust upon said property, and that the same was advanced by him as part of an agreement with the holder of said mortgage or deed of trust.

3. For finding and holding that on June 16, 1902, an agreement was entered into by the parties to this suit which alleged agreement the Auditor sets out in his report.

4. For finding and holding that the defendant paid out of his own funds $122.91 for taxes upon the property in suit under any other contract or agreement between the parties than that of March 13, 1902.

5. For finding and holding that $500 received on account of a sale of a portion of the land in suit to one Antonio Malnati was paid to the complainant T. C. Daniel, if by that is meant that it was paid to him on his own account or in any other way than as an officer of the complainant company and for its benefit.

6. For finding and holding that the defendant Campbell
367 in this accounting is not to be charged with the whole amount of the building loans obtained for improving any part of the land in suit, which loans aggregated $25,000.

7. For eliminating from the account stated an item of $600 received by the defendant as a result of a note of the complainant Daniel, which was discounted and the proceeds thereof paid to said defendant.

8. For finding and holding that the proceeds of a note of the complainant Redman, amounting to $375, which was discounted and turned over to the defandant, should not be charged against him in the statement of account.

9. For finding and holding that the defendant should not be charged with the sum of $150, paid to A. M. Cowell & Sons by the Complainants, or some of them at the request of the defendant on or about May 23, 1903.

10. In failing to charge the defendant with the receipt of $1,686.54 resulting from a sale of a part of the complainant Company's property sold to one Antonio Malnati, which the defendant received on or about January 7th, 1904 under protest from the complainants, the amount being claimed by the complainant company as money furnished by it and for which it should receive credit.

11. For finding and holding that the $500 paid on or about June 16, 1902 was a payment by the defendant on account of the underlying mortgage or deed of trust upon the property and in finding and holding that the complainants object to this item upon a theory advanced by them in respect of the contract of March, 1902, which alleged theory is set out in the report.

12. For finding and holding that the March 1902 agree-
368 ment of the parties provided for a "joint venture in which they assumed a common risk."

13. For finding and holding that the defendant advanced the sum of $957.50 for the payment of taxes upon the property in suit under any other contract, obligation or agreement than that of the parties dated October 23, 1902.

14. For finding and holding that the defendant paid $300 for the re-purchase of a lot of land forming part of that in suit, if the Auditor means to hold that this sum was paid by the defendant out of his own private means.

15. For allowing the defendant a credit of $143.45, being an alleged payment by him to Rudolph, West & Company on or about January 11, 1904, as not supported by any evidence whatever.

16. Objection is made to the item on the first page of Schedule "B" covering lumber and mill work and amounting to $271.95 as not having been proved.

17. For allowing the defendant a credit of $2,752.87 for carpenter work as appears in Schedule "B" accompanying Auditors Report, the evidence not justifying the allowance of any such sum.

18. For finding and holding that all the sums set forth in Schedule "C" attached to the Auditor's report had been paid by the defendant for the complainants or either of them, and for transferring the credit of said schedule to the total found by him to be due the defendant on the construction account.

19. For allowing the defendant credit on Schedule "C" accompanying his report of the item of $500, under date June 16,
369 1902, and the item of $122.91 under date of June 26, 1902, as not justified in this connection by the evidence, and for an error in the addition of said Schedule, increasing the credits allowed defendant by $9.00.

20. For not including in Schedule "D" accompanying the report, the two credits mentioned in the immediately preceding exception, where they properly belong as shown by the evidence, and for including therein three items of $15, $15.00 and $25.00, paid to one C. D. Burnley under dates of Sept. 13, 20 and 21, respectively, 1902, as not justified by the evidence.

21. Objection is made to all allowances for interest claimed to have been paid on account of building material purchased as part of the cost of construction of the houses heretofore referred to, thereby swelling the total of Schedule "D" accompanying the report by $871.43.

22. For finding and holding the cost of the construction of the houses erected on a part of the land in controversy amounted to $34,-544.51, as appears by Schedule "E" accompanying the Auditor's report.

23. For including in Schedule "F" accompanying the Auditor's report a credit in favor of defendant of a payment of $450 to A. M. Cowell & Son, which, according to the testimony was not paid until February 9, 1905.

24. For finding and holding that there was due to the defendant as of December 31st, 1903, for advances alleged to have been made by him the sum of $4,543.52, as appears on Schedule "F" accompanying the Auditor's report.

25. For finding and holding on page 8 of his report that
370 the controversy between the parties arising out of the sales of part of the land of the complainant company to Antonio Malnati gave rise to this litigation.

26. For finding and holding, if that is the meaning of the language used by the Auditor on page 8, that the theory of a joint ownership between the parties to this suit in the property "was practically suspended by the decree of the Court of Appeals."

27. For finding and holding that "Exhibit 6" filed by the complainant with the Auditor is neither misleading or inaccurate.

28. For finding and holding that there was no binding estimate of the cost of the houses built on a portion of the land in suit, and in effect holding that any cost that the defendant might have seen fit to incur was or would have been binding upon the complainants.

29. For finding and holding that there was a moderate increase of cost in the construction of the dwellings built upon a part of the land in suit and for justifying such increase.

RALSTON & SIDDONS,
Complainant's Solicitors.

Order.

Filed Jun- 10, 1909.

This cause coming on to be heard upon the exceptions of the complainants to the Auditor's report filed herein on the 19th day
371 of Dec. 1908, and having been argued by counsel for the respective parties, submitted and considered, it is, by the Court, this 10th day of June, 1909,

Ordered

That the 1st, 2nd, 3rd, 4th, 6th, 7th, 8th, 11th, and 24th exceptions be, and the same are hereby sustained; the questions raised by exceptions Nos. 12, 18, 19, 20 and 23 are reserved, and the remaining exceptions having been abandoned are overruled and this cause is hereby recommitted to the Auditor with directions to re-state the account in accordance with the opinion of the court as indicated by the exceptions hereby passed upon. In re-stating the said account, the auditor is directed to state the account between the complainants and the defendant, charging the defendant with all the moneys received by him from, or on account of the complainants and crediting him with all the moneys paid out by him on such account. And in

re-stating the account, the Auditor shall compile a schedule which shall show the total amount received by the defendant Campbell from all sources up to the date of December 31, 1903 and his expenditures to that date including moneys expended to procure release from the underlying Frantz mortgage or deed of trust of the ten lots upon which the houses were built, and the costs of the building loan, but excluding moneys paid out by the defendant in and about the organization of the Washington Sanitary Dwellings Company and the sale of stock therein excluding the payment of Five Hundred (500.00) Dollars on June 16, 1902, and excluding the payment for taxes of One Hundred and Twenty-two and
372 91/100 Dollars (122.91) Dollars on June 26, 1902, these expenditures to be the subject of a separate schedule. It is further

Ordered

That the Auditor make and file the foregoing report forthwith.

WRIGHT, *Justice.*

Auditor's Report.

Filed Jul- 26, 1909.

By an order of the Court this cause is re-referred to me to re-state the account between the parties with certain specific directions as to the methods of such statement. After due notice to counsel and hearing them I proceeded to execute the order of reference.

In Schedule A herewith I have re-stated the general account with the changes directed by the order of reference charging the defendant with the gross amount of the two building loans and with the money received by him from all sources including the two notes of Daniel and Redman.

I have stated credits for payments made by the defendant or from the building loans, for release of the Franze trust, taxes, and costs of the building loans, also for the other expenditures and payments made by the defendant, including the cost of construction of the ten houses as set forth in Schedule B of the first report.

373 In schedule F of this account I have re-stated the account contained in the former Schedule F to show the statement of the defendant's account as of December 31, 1903, omitting an item of alleged payment to A. M. Cowell & Son of four hundred fifty dollars ($450.) which is included in the former Schedule F and excepted to by the complainant on the ground that such payment was not made until after December 31, 1903. This exception being reserved by the Court the amount of the item is omitted in this schedule.

In addition Schedule described as Special Schedule directed by the Court, I have stated that portion of the account claimed by the defendant relating to the Sanitary Dwellings Company enterprise, together with an item of payment of Five Hundred Dollars ($500.) by the defendant on June 16, 1902 and for the payment of taxes

one hundred twenty-two dollars and ninety-one cents ($122.91) on June 26, 1902, these two items being omitted from the general account and included in the Schedule by direction of the Court.

JAS. G. PAYNE, *Auditor.*

374 SCHEDULE A (Restated).

The Defendant in Account with the Complainants.

Dr.

To Gross amount of first building loan		12,500.00
Gross amount of second building loan		12,500.00
" Refund by District of sewer deposits		87.01
" Cash from T. C. Daniel		200.00
" From Mickel		9.00
" Note of T. C. Daniel		600.00
" Note of S. C. Redman		375.00
		26,271.01
The defendant received from the proceeds of the first Sale to Malnati	1,686.54	

January 7th, 1904.

375

Credit		26,271.01
By Payments through F. H. Smith & Son from the first loan for releases of the Frantz trust, taxes and costs of building loan		2,474.25
" The same from the second loan		2,895.74
" Paid for sewer extension March 4th and 18th, 1902		202.00
" For pavement April 10th		68.00
" Paid taxes December 8th		957.55
" Paid for lot purchased Dec. 31st		300.00
" Insurance Febr. 14th, 1903		25.00
" McGill & Wallace		9.00
" Paid for advertisement		2.00
" Tax certificate		.50
" Repaid T. C. Daniel		600.00
" Repaid S. C. Redman		375.00
		7,909.04

376

Cr.		26,271.01
	7,909.04	
Expended in construction of ten houses per schedule "B" of first report	23,089.80	
		30,998.84
	30,998.84	
	26,271.01	
Excess of credits	4,727.83	

JAS. G. PAYNE, *Auditor.*

377 SCHEDULE F (Restated).

Statement of Defendant's Account as of December 31st, 1903.

Dr.

To Amount received from all sources per Schedule "A"		26,271.01
Cr.		
By Payments per same schedule exclusive of cost of construction of houses		7,909.04
Less Redman and Daniel notes		975.00
		6,934.04
" Cost of construction at said date omitting payment to A. M. Cowell & Son of $450.00, exception to which is reserved by the Court	21,891.57	
	450.00	
		21,441.57
		28,375.61
		26,271.01
Excess of credits		2,104.60

JAS. G. PAYNE, *Auditor.*

378 *Statement of Allowances to Defendant in Auditor's First Report, Exceptions to Which are Sustained or Reversed by the Court's Order.*

Expenditures by defendant on account of the Sanitary Dwellings Company as per schedule "D" of Auditor's first report	481.81
Allowance to defendant as for payment June 16th 1902 on account of indebtedness secured by deed of trust	500.00
Allowance to defendant as for payment of taxes June 26th 1902	122.91

JAS. G. PAYNE, *Auditor.*

379 *Defendant's Exceptions.*

Filed Aug. 24, 1909.

Now comes the defendant by his solicitor and excepts to the report of the Auditor filed herein on the 26th day of July, 1909 for the errors in said report which are set forth in the Exceptions hereinafter set forth that is to say:

First Exception.

To the omission by the Auditor from Schedule F restated of credit to defendant for $450. paid Cowell & Son.

Second Exception.

To the omission by the Auditor from Schedule F restated of credit to the defendant for $600. for repayment of Daniel note.

Third Exception.

To the omission by the Auditor from Schedule F restated of credit to defendant for $375. for repayment of Redman note.

Fourth Exception.

To the omission by the Auditor from Schedule F restated of credit to defendant for $500. paid by him June 16, 1902.

Fifth Exception.

To the omission by the Auditor from Schedule F restated of credit to defendant for $122.91 paid by defendant for taxes.

Sixth Exception.

To the omission by the Auditor from Schedule F restated of credit to defendant for $481.81 paid by him on account of Sanitary Dwellings Company (see schedule D in first report for items).

Seventh Exception.

380 To the omission by the Auditor from Schedule A restated of credit to defendant for $500. paid by him June 16th 1902.

Eighth Exception.

To the omission by the Auditor from Schedule A restated of credit to defendant for $122.91 paid by him for taxes.

Ninth Exception.

To the omission by the Auditor from Schedule A restated of credit to defendant for $481.81 paid by him on account of Sanitary Dwellings Company.

Tenth Exception.

To the finding by the Auditor that the excess of credits over the receipts as of December 31st 1903 was $2104.60.

Eleventh Exception.

To the failure of the Auditor to find that the excess of credits over receipts as of December 31st 1903 was $4634.32. And this exceptant prays the Court to correct the said errors in said report.

JNO. RIDOUT,
Solicitor for Exceptant.

Opinion of Court.

Filed Jan. 18, 1910.

The bill was filed in this case February 8, 1904, and the relief prayed for by the complainants, is to have the defendant enjoined from conveying an undivided third interest in the real estate described in the bill; to have him account for the cost of buildings erected on the premises, and for moneys received by him; to
381 have the contracts set out in the bill co-celed; and to require the defendant to reconvey to the complainant Improvement Company, the undivided third interest in the said real estate, which was conveyed to the defendant by said Company, by deed dated January 16, 1903.

The complainant, Northwest Eckington Improvement Company, was incorporated for the purpose of buying, developing, and selling real estate, and as such purchased lot 35 in the subdivision of a tract of land called "Metropolis View," containing 10½ acres more or less, acquiring the title from complainant T. Cushing Daniel, by two deeds, recorded in Liber 1602, folio 253, and Liber 2539, Folio 293.

The said Improvement Company of which the complainants Daniel and Redman were the principal stockholders, in 1902 entered into a contract, dated March 13, 1902, with the Defendant, under which the defendant undertook to organize a corporation, to be known as the Sanitary Dwellings Company, to build houses upon, and to improve, the said tract of ground. That the said defendant did organize such company, and endeavored to sell stock therein, but failed; and the project was abandoned.

Thereafter, to-wit, October 23, 1902, the parties hereto entered into a second contract, under which the said defendant was to furnish his skill as a builder, and his financial assistance, to the complainants, for the purpose of improving, developing, and marketing the said real estate, five houses on said property to be erected at once, with others as soon as the results of the first might seem to warrant.

When said contract was completed, the defendant was to be-
382 come possessed of an undivided third interest in the property.

Under this second contract, a portion of the said real estate was conveyed by said company to the complainants Daniel and Redman, and the defendant Campbell, as tenants in common, upon which the first five two-family apartment houses were to be erected. This deed is recorded in Liber 2684, folio 352.

The grantees thereupon borrowed money upon said property, and executed a deed of trust to secure the same, the money so borrowed

to be used in part in paying off prior encumbrances, and in part in the construction of the said five houses.

The defendant, shortly after the said houses were commenced, insisted *the* he was not properly secured by the contract of October 23, 1902, and that the Improvement Company should convey to him an undivided third interest in the remainder of said tract of ground, or give him a further contract as an alternative; and finally, on January 16, 1903, by a deed recorded in Liber 2707, folio 130, they conveyed an undivided one-third interest.

Thereafter, sufficient ground for the erection of five other houses was conveyed to the complainants Daniel and Redman, and the defendant Campbell, by a deed dated March 31, 1903, and recorded in Liber 2708, Folio 342; whereupon the said parties borrowed money upon that ground, using part of the funds to discharge a proper trust, and part for the construction of the buildings thereon.

That complainants Daniel and Redman became bound with the defendant Campbell on certain notes, represented by him to be necessary to raise money for the purpose of said buildings, and the said ten houses were represented by him to cost $33,000 when
383 completed.

November 23, 1903, the complainant Improvement Company, with the consent of the defendant, contracted to sell a portion of said land to one Antonio Malnati, for $15,200. $6,000 of this purchase money was required to pay off a trust on the property, and some taxes, leaving nearly $9,000 surplus.

The defendant Campbell demanded that he should have one-third of this money, claiming to be the owner of one-third of the property; and that he should also have out of the said sum before the division, some $4,000, which he claimed he had advanced on account of the ten buildings erected.

The complainants refused to admit that said defendant was entitled to any of the proceeds of said sale; but in order that the sale might be consummated, it was agreed that certain moneys should be retained in the hands of Judson T. Cull, without waiving any of the rights of the complainants; and that the defendant Campbell thereupon produced and delivered to the complainants some vouchers in support of his claims, from an examination of which, in connection with his account as presented, it appeared that the said buildings cost over $44,000, instead of $33,000, which the defendant had represented they were to cost; and that instead of said defendant having advanced $4,000 from his own private funds, in connection with the said buildings, that he was indebted to the complainants in a sum in excess of $5,000.

The complainants denied that the defendant was entitled
384 to one-third of the real estate; but claimed that he was only entitled to hold title to one-third as security, until he should faithfully perform, execute, and carry out the duties undertaken by him under the said contract, and if he did fully perform his contract, his right to one-third of the land was to become absolute. They aver that the defendant has failed to carry out and perform the obligations imposed upon him by the said contract of October 23, 1902;

and that he has involved the complainants in debt, and refuses to inform them as to the cost of said buildings, or to properly account for the large sums of money placed at his disposal for the building operations aforesaid.

The defendant in his answer, claims that he is entitled to an undivided one-third interest in all the said tract of land, subject to encumbrances, except that which was conveyed to the said Antonio Malnati.

He admits that the scheme for forming a sanitary dwelling company, to improve said land, as contemplated by the contract of March 13, 1902, failed; but he claims that he expended in the effort to consummate that contract $1,045. He admits the execution of the contract dated October 23, 1902; but he says it was not executed and delivered until November 27, 1902. He admits that he has always claimed to be entitled to an absolute conveyance of a one-third undivided interest in all the land owned by the complainant Company; and avers that the complainants fully recognized this right; and he denies that the said conveyance to him of the one-third interest was made by way of security.

He claims that he has always been willing to account fully,
385 and in such manner as may be deemed proper by the court.

He denies that he has failed to perform any of his obligations under the contract; and claims that he incurred liabilities to a large amount for the cost of buildings and that he has guaranteed the payment of about $32,000, balance due on purchase money of said real estate.

He also states in his answer, that complainants have diverse interests which cannot be litigated in this cause; and that they have not stated such a case by their bill, as entitles them to any relief against him; and he asks the same benefit of these objections as if raised by demurrer.

Testimony was taken, and the case came on for hearing before Mr. Justice Anderson, who denied the relief asked for by the complainants, as to the cancelation of the contracts; and the declaring of the said deed to the defendant of an undivided one-third interest to be as security merely; but referred the cause to the Auditor, for a full accounting between the parties, respecting the affairs of the joint enterprise.

From this decree the complainants appealed and the Court of Appeals reversed so much of the decree of this court as was appealed from, and remanded the cause, with directions to enter a decree declaring the true intent and purpose of the deed of January 16, 1903, to the defendant, as indicated in the opinion, which is found in 28 Appeals D. C. 483.

In accordance with the mandate from the Court of Appeals, it was adjudged by this court, on January 18, 1907, that the said deed of
January 16, 1903, was conditional, depending upon the per-
386 formance of the agreement in accordance with which it was made, as indicated in the opinion of the Court of Appeals.

Thereupon the case proceeded for an accounting before the Auditor; and after hearing the same, the Auditor made his report, which

was filed December 19, 1908, and to which certain exceptions were filed by the complainants. These exceptions came on for hearing before Mr. Justice Wright, and he signed an order on June 10, 1909, sustaining certain of the exceptions, overruling certain others, and reserving judgment as to certain other exceptions until the coming in of a further report which the Auditor was directed to make.

Thereupon the Auditor made a second report, which was filed herein July 26, 1909, and to which exceptions were filed by the defendant.

The case now comes on for final hearing on the whole record, pleadings, testimony, Auditor's reports, and exceptions.

The law, so far as the claim of the complainants relating to the deed of January 16, 1903 is concerned, appears to me to have been settled by the Court of Appeals. In the opinion of that court it is stated that the legal effect of the contract of October 23, 1902, was to make the complainants partners with the defendant Campbell, in the development of the land in question by building houses thereon, the complainants furnishing the land, and the defendant undertaking the erection of the houses. All of the parties were to join in using their credit in obtaining money to erect the houses, and pay off the $32,000 encumbrance; and the sums advanced by the
387 respective parties were to be accounted for. In return for said undertaking on the part of the defendant Campbell, the contract provided that he was to become possessed of an undivided one-third interest in said property.

The opinion then continues:

"Clearly this did not contemplate that Campbell should at once become the absolute owner of this one-third of the land. It was necessarily conditioned upon the terms of his undertaking, before recited in the contract. He had no immediate right to demand a conveyance thereunder, and none when the deed was actually executed and delivered to him on January 16, 1903."

It seems that the defendant demanded the deed, or the execution of a further contract or paper which he produced, and the court says in regard to the same:

"Accepting Campbell's version of this transaction and the paper as the true one, his statement is not calculated to impress us with the fairness of his purpose. This proposed contract went much farther than the deed which he demanded the execution of as an alternative. It did not only contain a special indemnity clause, for which there was no apparent reason, but also a clause releasing the Northwest Eckington Improvement Company and Campbell, from all rights, interest, or claim, which Daniel and Redman claim or could claim under any former agreement."

Again the opinion states:

"When the deed was executed on January 16, 1903, it is not pretended that there was any new consideration for its execution.
388 It was founded wholly upon the provisions of the contract of October 23, 1902, no matter what may have been the private opinion of the respective parties as to Campbell's rights thereunder; and its meaning, purpose, and effect are determined

thereby. * * * In the light of the circumstances pointed out we can come to no other conclusion that that complainants' statement of the purposes of this deed is the correct one. They represent it as given to secure Campbell in the performance of the contract. It was not a security or an additional security in the ordinary sense, but it did make Campbell secure in the case of his endeavor to carry out that contract, by giving him at once the conveyance that he might thereafter become entitled to, and enabling him by its registration to give notice of his rights under the contract to all persons who might thereafter acquire any interests from the complainants.

The decree, in so far as this conveyance is concerned, is interlocutory in its nature, and for the guidance of the Auditor in stating the account between the parties, and, instead of virtually establishing it as an absolute deed, should have declared it to be merely a conditional one, dependent upon the performance of the agreement in accordance with which it was made. The question whether it shall be canceled is a final one that can only be properly determined upon the coming in of the Auditor's report, with the account that has been ordered to be taken by him."

It does not appear to me from the reports of the Auditor, or argument of counsel, that any new facts have been developed,
389 which could in any way make the observations of the Court of Appeals inapplicable at this time, or which could in any way tend to change the opinion respecting the said deed; and I shall therefore assume that the proper form of decree to be now entered herein, so far as respects the said deed, is in accordance with the opinion of the Court of Appeals, and following the prayer of the bill, namely, that the defendant be decreed to hold the said one-third title to said tract so far as the same is not built upon, as security, and that he be required to reconvey the same to the complainant Improvement Company, on the final settlement of accounts between them. I think the decree must also cancel the contracts, as prayed in the bill, as they appear to have been abandoned; or if not, that the action of the defendant in the matter of demanding the absolute deed of a one-third interest, or the execution of the alternative new contract, at the time and under the circumstances detailed in the evidence, justifies the complainants in asking a cancelation of all contracts for further joint operations.

To the Auditor's first report, filed December 19, 1908, there are only five exceptions filed by the complainants, Nos. 12, 18, 19, 20 and 23 which have not been disposed of in some way.

Exception No. 12 applies to the language of the report, wherein the Auditor has stated that the March 1902 agreement of the parties provided for "a joint venture in which they assumed a common risk." This exception must be sustained, because under that contract the whole risk of organization of, and sale to, the Sanitary
Dwelling Company, was assumed by the defendant Camp-
390 bell. He was to organize a company for the purchase of said ground, and give the necessary time and attention to that end; and if his plans should work out, so that his proposed company

should buy the ground, he was to receive a third of the amount realized; and in the event of the sale or disposition of a part of said property in that way, he was to become possessed of an undivided one-third interest in such part so disposed of. The labor of organizing the purchasing company, and the responsibility of making the scheme succeed, were assumed by the defendant; and he admits that the venture was a failure.

Exception No. 18 relates to Schedule C, and objects to the Auditor holding that all of the sums in said schedule had been paid by the defendant for the complainants, or either of them; and the exceptants object to transferring the credit of said schedule to the total found to be due the defendant on the construction account.

The items in this schedule to which exception is taken, are the item of $500, paid on account of indebtedness secured by deed of trust, as of June 16, 1902, and $122.91, taxes paid June 26, 1902. These two items would have been beneficial to the defendant, if he had succeeded in making a sale of all the property to the Sanitary Company, for they would have increased the value of his one-third equity in the property in that event. His effort to dispose of the ground, or any part of it, to the Sanitary Dwelling Company, having failed, he is thereby deprived of any right to recover these sums, unless the contract of October 23, 1902, preserves to him the
391 right to recover the same. That contract provides that in borrowing money, which may be needed in developing said enterprise by way of building houses on said land, the defendant is to use his credit, by joining with the other parties; and in doing this, account is to be taken of all moneys already advanced *under contracts in relation to said property;* and any sums advanced, or to be advanced, are likewise to be accounted for.

I am inclined to think the proper construction of this contract is, that any sums paid out by Campbell for the benefit of the enterprise, that is, for taxes, improvements, or encumbrances on the land, while he was endeavoring to dispose of the property by means of the Sanitary Dwelling Company, are to be considered in the account, and that he is to have credit therefor. This seems to me to be equitable for it is not claimed that he did not act in good faith in his endeavor to organize the said Sanitary Dwellings Company and to dispose of the property in that manner; and whatever he paid on account of taxes or the prior encumbrance on the property, or for improvements of any kind, inured to the benefit of the owners, whoever they may be. What he paid for the experiment of organization and attempted sale to the Sanitary Dwelling Company, was his own affair, and did not enhance the value of the property. The Complainant Company is the owner of all the unimproved property, if the Court is right in the opinion above announced, that the defendant should reconvey to it any interest that he has therein, under said deed of January 16, 1903. The land on which the ten houses have been erected, was conveyed to and is held by
292 the complainants, Daniel and Redman, and the defendant Campbell, as tenants in common; and if there is any equity in the said improved property, the defendant Campbell is entitled

to his one-third part thereof. It follows from this conclusion that complainants' exception No. 18 must be overruled.

Exception No. 19 refers to the same items, with an additional item of an alleged error of $9 in the addition of said schedule. If this error appears in the addition, it should be corrected, and to that extent said exception will be sustained; but as to the items of $500 and $122.91, the same will be overruled.

Exception No. 20 refers to Schedule D of the Auditor's report, and objects to three items aggregating $55, for money paid to C. D. Burnley, the complainants claiming that said payments were not justified by the evidence. The Court thinks, however, the Auditor is in error in allowing all the credits in Schedule D, aggregating $481.81 and will therefor- sustain Exception No. 20.

Exception No. 23 relates to Schedule F, and concerns the item of $450, paid to A. M. Cowell & Son and incorporated in the aggregate credit in said schedule. As to that item, I am inclined to take the view that the auditor took, as shown on page 115 of the testimony taken before him. Instead of this item being paid for work done for the Improvement Company, it seems to have been paid by Mr. Campbell for work done for him elsewhere; but if it was agreed between Mr. Cowell and Mr. Campbell, that Mr. Campbell should still owe Mr. Cowell for the work done elsewhere, and allow the credit of $450 to be applied on work done on account of these
393 houses I see no reason why the credit should be shifted. The equitable owners of this real estate on which the houses were built have had the benefit of the $450 worth of work, as I understand the facts. I will therefore overrule this exception.

The second report of the Auditor, filed July 26, 1909, amounts to nothing more than a restatement of the account in different form.

To this report no exceptions appear to have been filed by the complainants, but the defendant filed certain exceptions thereto. Some of these have already been disposed of by the rulings herein on the exceptions filed by the complainants to the first report.

It seems to me that the rulings of the court on the exceptions filed by the complainants, dispose of all the questions which the defendant is entitled to raise under his exceptions to the second report; and if the account can be modified by counsel, so as to embody now all the credits which the defendant may be entitled to under the said rulings and in accordance with this opinion, a decree, confirming such report so modified, and overruling all the exceptions that the defendant has filed to the second report will be proper.

In ascertaining the correct balance in favor of defendant, regard must be had to the rulings of Mr. Justice Wright, as it is not my purpose to disturb them in any way.

I think, however, the $481.81 paid by defendant on account of the Sanitary Dwellings Company, as per Schedule D, of the Auditor's first report, will have to be excluded from the credits
394 due to the defendant.

To state the result of my consideration, in brief, it is about as follows:

First. I feel bound by the opinion of the Court of Appeals, as well as from my own view of the evidence, to declare that the deed of January 16, 1903, was not intended to convey a present absolute title, but was only to secure the defendant his share of the profits in the enterprise when he should perform his share of the work of building houses and making sales. To the extent that he had performed his contract obligations, the security should be kept intact

Second. As to the ten houses and the land on which they stand, the defendant has an undivided one-third interest under the two deeds executed to him, and to the complainants, Daniel and Redman. That title was, I think, intended to be absolute, subject to encumbrances.

Third. The contracts which were executed by the parties plaintiff and defendant, ought to be canceled, for there is no prospect of any amicable continuation of operations under the same, even if there was any desire by either party to do so.

Fourth. The defendant should reconvey to the complainant, the Northwest Eckington Improvement Company, the title received from it, by deed of January 16, 1903, on being paid, or satisfactorily secured, what, if anything, now remains due him on settlement of accounts on the lines hereinbefore indicated.

Fifth. If the defendant has become bound to pay any portion of the encumbrance on the said unimproved land, which is held
395 by Mrs. Franz, the complainants should either obtain his release therefrom, or indemnify him against the same.

JOB BARNARD,
Justice.

Final Decree.

Filed Feb. 9. 1910.

This cause coming on to be heard upon the exceptions of the defendant to the Auditor's second report filed herein on the 26th day of July A. D. 1909, and having upon consideration been ordered by the court over the defendant's objection to be heard on the whole record, including the pleadings, evidence taken by the examiner and before the Auditor the aforesaid defendant's exceptions and certain reserved exceptions of the plaintiffs to the first report of the Auditor filed herein, and having been fully argued by counsel for the respective parties and submitted and considered, it is, by the Court, this 9th day of February A. D. 1910.

Adjudged, Ordered and Decreed

as follows:

1. That the exceptions of the plaintiffs to the Auditor's report filed December 19th 1908, numbered 12 and 20 be and and they are hereby sustained; their exceptions to said report numbered 18 and 23 be and they are hereby overruled, and so much of their exception numbered 19 to said report, as relates to the payments

made by the defendant of $500.00 on June 16th 1902 and of
396 $122.91 on June 26th 1902, be and the same is hereby overruled, and so much of said exception as relates to the error in the addition of Schedule C of said report, be and the same is hereby sustained.

2. That all of the defendant's exceptions to the Auditor's second report filed herein on July 26th 1909, be and they are hereby overruled and the said two reports of the Auditor are, except as modified by this decree and by the order of this Court heretofore passed in this cause on the 10th day of June A. D. 1909, finally ratified and confirmed.

3. The contracts or agreements dated March 13, 1902 and October 23rd 1902, by and between the parties to this suit are hereby cancelled, set aside, declared void and for naught held.

4. That the ten houses constructed under the aforesaid contract of October 23, 1902, together with the lots upon which they were built, and which lots were conveyed by the plaintiff company to the plaintiffs T. Cushing Daniel, Samuel C. Redman, and the defendant Charles M. Campbell, are the property of said T. Cushing Daniel, Samuel C. Redman and Charles M. Campbell as tenants in common in equal shares or proportions, the interest or share of said Charles M. Campbell therein, however, being subject to a charge in favor of said T. Cushing Daniel and Samuel C. Redman of $1237.65, being the balance due by him on his one-third of the excess cost of building said houses and obtaining a release of the said ten lots from a mortgage or deed of trust thereon known in these proceedings as the "Franz mortgage or deed of trust," over and
397 above the money obtained for these purposes by loans secured by certain deeds of trust placed upon said ten lots by said T. Cushing Daniel, Samuel C. Redman and Charles M. Campbell, which said amount of $1237.65 the said Charles M. Campbell is hereby decreed to pay forthwith to said T. Cushing Daniel and Samuel C. Redman or their attorneys of record, and for the same the said T. Cushing Daniel and Samuel C. Redman shall have execution as at law.

5. The plaintiffs are required to either obtain a release of the defendant from all obligations or liability on his part arising or that might arise under the agreement of December 2, 1902, set out out in these proceedings, by and between T. Cushing Daniel, Charles M. Campbell, Samuel C. Redman and Eleanora T. Franz, or to file in this cause, a bond with a surety or sureties in a penal sum to be first approved by this Court, conditioned to indemnify, save and hold harmless, the said Charles M. Campbell from all costs, damages or losses that he may incur or suffer by virtue of his being a party to said agreement, and directly resulting therefrom.

6. Upon procuring either the release or filing the bond required by the preceding paragraph numbered 5 of this decree, the defendant shall within thirty days thereafter execute and deliver to the plaintiff company a deed in fee, reconveying to it the undivided interest in the land of said Company, conveyed to him by the deed of said Company dated January 16, 1903 and set out in these pro-

ceedings excepting the ten lots referred to in paragraph numbered
4 of this decree, and the land sold and conveyed to Antonio
398 Malnati; the said deed of January 16, 1903 being hereby declared to be not an absolute deed, but only intended to secure said defendant his share of profits in the enterprise undertaken by the parties to this suit under the aforesaid contract of October 23, 1902, to the extent that said defendant performed his obligations thereunder. Should the defendant fail or refuse to execute and deliver the reconveyance herein ordered to be made by him, within said thirty days prescribed then this decree shall stand and be taken as such reconveyance and a certified copy thereof may be recorded by the plaintiff company among the land records of the District of Columbia.

7. The defendant shall pay the costs of this suit and the plaintiffs shall have execution therefor as at law.

JOB BARNARD,
Justice.

From this decree the defendant prays an appeal to the Court of Appeals & on his application the penalty of the bond on such appeal is fixed at $100. if for costs only & at three thousand dollars if to operate as a supersedeas.

JOB BARNARD,
Justice.

Memorandum.

February 16, 1910—Appeal bond filed.

399 *Appellant's Directions to Clerk for Preparation of Record.*

Filed Mar. 28, 1910.

The Clerk in preparing the Record on the appeal from the final decree in this cause will include therein

1. The papers set forth in the designation for the Record on the first appeal herein including said designation and the stipulation filed in connection therewith also exhibit Rebuttal No. 6.
2. The Mandate filed Jan. 4, 1907.
3. Decree on Mandate Jan. 18, 1907.
4. Auditor's Report filed Dec. 19, 1908.
5. Exceptions.
6. Decree on Exceptions.
7. Auditor's report filed July 26, 1909.
8. Exceptions.
9. Opinion on exceptions and final hearing.
10. Final Decree.
11. Bond.

JOHN RIDOUT,
Attorney for Defendant.

Appellees' Directions to Clerk for Preparation of Record.

Filed Apr. 6, 1910.

Mr. John R. Young, Clerk of Court:

400 The Appellees in the pending appeal in the above entitled suit, they being the original complainants therein, designate as to be included in the record, in addition to that designated by the Appellant in his designation, filed herein on the 28th day of March, 1910, the following:

1. Stipulation filed March 27, 1906.
2. Testimony and exhibits accompanying Auditor's report of December 19, 1908.
3. Testimony and exhibits, if any, accompanying Auditor's report filed July 26, 1909.
4. Appellant's designation of record on appeal filed March 28, 1910.
5. This designation.

RALSTON, SIDDONS & RICHARDSON,
HOLMES CONRAD,
Attorneys for Appellees.

Memorandum.

APRIL 18, 1910.

Time in which to file transcript of record in Court of Appeals extended to and including May 25, 1910.

401 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R, Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 400, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copies of which are made part of this transcript, in cause No. 24463, in Equity, wherein Northwest Eckington Improvement Company, et al. are Complainants and Charles M. Campbell is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 20th day of May, 1910.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia, Supreme Court. No. 2176. Charles M. Campbell, Appellant, vs. Northwest Eckington Improvement Company et al. Court of Appeals, District of Columbia. Filed May 20, 1910. Henry W. Hodges, Clerk.

THURSDAY, *November 3rd, A. D.* 1910.

No. 2176.

CHARLES M. CAMPBELL, Appellant,
vs.
NORTHWEST ECKINGTON IMPROVEMENT COMPANY, T. CUSHING DANIEL, and SAMUEL C. REDMAN.

The above entitled cause was submitted to the consideration of the Court on the printed record and appellant's brief filed herein by Mr. John Ridout, attorney for the appellant.

In the Court of Appeals of the District of Columbia.

No. 2176.

CHARLES M. CAMPBELL, Appellant,
vs.
NORTHWEST ECKINGTON IMPROVEMENT COMPANY, T. CUSHING DANIEL, and SAMUEL C. REDMAN.

Opinion.

(Mr. Justice ROBB delivered the opinion of the Court.)

This is an appeal from a decree of the Supreme Court of the District of Columbia upon a Bill (1) to cancel agreements between the parties relating to building operations, (2) to require defendant, appellant here, to reconvey an undivided one-third interest in real estate described in the Bill and which had previously been conveyed to the defendant by the complainants, (3) for a general accounting and (4) for general relief.

Inasmuch as the case has already been before this Court, (N. W. Eckington Imp. Co. vs. Campbell, 28 App. D. C., 483), and no new facts have since been developed, we will refer to our prior opinion for a detailed statement of the facts, giving here a mere outline thereof. The complainant company was incorporated for the purpose of buying, developing and selling real estate. Its stock was owned by T. Cushing Daniel and Samuel C. Redman. The company acquired from said Daniel Lot 35 in the subdivision of a tract of land called Metropolis View in the District of Columbia, comprising about ten acres. There was then an incumbrance of $32,000 upon the land. Owing to financial embarrassment Daniel and Redman were unable to exploit the land, and being apprehensive of the foreclosure of the mortgage thereon entered into an agreement with the defendant Campbell, who was a builder and real estate speculator, on March 13th, 1902, by which agreement Campbell was to organize or be instrumental in organizing a company for the purchase of the land of the Improvement Company, and if successful Campbell was to have a one-third interest in the property; if in part successful he

was to have a one-third interest in the land actually sold to the new company. Campbell did not succeed in carrying out this contract and on Oct. 23rd, 1902, a new contract was entered into with him in which it was recited, inter alia, that "3. The said Daniel, Redman and the Northwest Eckington Improvement Company have decided to improve and market said property, as fast as may be possible, by building houses thereon.

4. To this end they desire to utilize, the skill of said Campbell as a builder and his assistance financially.

5. It is agreed by said Daniel, Redman and the Northwest Eckington Improvement Company to employ said Campbell as a skilled builder in the erection of said houses, he to take charge of said work, with such assistance as the other parties to this contract may be able to furnish, and pursue such work industriously and with all the ability and skill he can bring to the work."

It was also provided that "account is to be taken of all moneys and interest he (Campbell) has already advanced under contracts in relation to said property already entered into between the parties hereto. And any sums advanced or to be advanced by any of said parties for the same purpose under said agreements is likewise to be accounted for." Paragraph 7 recites that five houses are to be erected immediately upon said property, to be followed by others "as soon as such a course is warranted by the results and approved by the judgment of the parties to this agreement, said Campbell to industriously push said improvements with his best skill and ability, as provided in paragraph 5 herein, without any further compensation for his services than are provided for herein." Paragraph 8, which has been the source of much trouble, is as follows: "In return for said undertaking on said Campbell's part he is to become possessed of an undivided one-third interest in said property."

Five houses were begun in the fall of 1902, the land taken for the houses being conveyed to Redman, Daniel and Campbell. A building loan was secured, part of which was paid to relieve the land from the original mortgage. Late in March 1903, the same proceeding was followed and five other houses constructed. As stated by Mr. Chief Justice She[illegible]d in the prior opinion of this Court, "it is apparent that the scheme of developing the property by building sanitary dwellings, or small apartment houses as they might be called, was suggested by the expected railway development near to the Eckington lands, in contemplation of certain acts, and another bill pending in Congress, which finally resulted in the acts for the building of the new Union Station, and subsequent changes in the location of railway freight stations, tracks, etc. Respecting these improvements two acts of Congress relating thereto were approved February 12, 1901. The new bill improving thereon and providing for the Union Station, pending in 1902, became a law on February 28, 1903." In May 1902, while Campbell was operating under the first contract of March 13th, 1902, he issued a prospectus calling attention to these railroad improvements and saying: "This railroad expenditure, which has been estimated at $20,000,000, will bring a large number of families into this region, people with steady employment

and good wages, who will want exactly this class of homes. * * * It is believed by the officers that not less than 6 per cent will be earned from the date when the first forty houses are finished, and not less than 5 per cent from the date of subscription." The situation as regards railroad improvements, when the contract of Oct. 23rd, 1902, was executed did not differ materially from that existing at the date of the issuance of this prospectus. On Jan. 16th, 1903, Campbell induced the Eckington Improvement Company, without the payment of any further consideration, to convey to him an undivided one-third interest in all of the land of the company. Soon thereafter a change took place in the relations of the parties which finally culminated in the filing of complainants' Bill on Feb. 8th, 1904.

This Court, for reasons stated in its opinion, found that said deed of Jan. 16th 1903 was not absolute but conditional and dependent upon the performance of the agreement in connection with which it was made. The case was thereupon remanded, the court saying: "The decree, in so far as this conveyance is concerned, is interlocutory in its nature, and for the guidance of the auditor in stating the account between the parties, and, instead of virtually establishing it as an absolute deed, should have declared it to be merely a conditional one dependent upon the performance of the agreement in accordance with which it was made. The question whether it shall be canceled is a final one that can only be properly determined upon the coming in of the auditor's report with the account that has been ordered to be taken by him." Thereupon action was had in the court below in accordance with the mandate from this court. Upon the filing of the auditor's report the complainant noted certain exceptions. Thereupon, according to the record, the cause came to hearing before Mr. Justice Wright upon these exceptions, and after "having been argued by counsel for the respective parties" the court overruled certain of the exceptions, sustained some and reserved others. The court also directed the auditor to restate the account. No exception was taken by the defendant either to the auditor's report or to the action of the court upon complainants' exceptions. The account was accordingly restated but, as found by Mr. Justice Barnard, this second report of the auditor "amounts to nothing more than a restatement of the account in different form." Thereupon defendant filed eleven exceptions and the case came on for hearing before Mr. Justice Barnard, who proceeded to dispose of the complainants' exceptions not finally disposed of by Mr. Justice Wright. We are concerned with but one of those exceptions, since the others were decided adversely to complainant and no exceptions taken. That relates to the disallowance of a claim of the defendant for $481.81 for incidental expenses in attempting to organize the Sanitary Dwelling Company under the abandoned contract of March 13th 1902. The court allowed two items of credit under said contract, one for $500.00 which Campbell paid on account of the indebtedness secured by the deed of trust on the Improvement Company's land, and an item of $122.91,—taxes paid by Campbell on said property. Speaking of the contract of October 23rd, 1902,

superseding the abandoned contract, the court said: "I am inclined to think the proper construction of this contract is, that any sums paid out by Campbell for the benefit of the enterprise, that is, for taxes, improvements or encumbrances on the land, while he was endeavoring to dispose of the property by means of the Sanitary Dwelling Company, are to be considered in the account, and that he is to have credit therefor. This seems to me to be equitable for it is not claimed that he did not act in good faith in his endeavor to organize the said Sanitary Dwellings Company and to dispose of the property in that manner; and whatever he paid on account of taxes or the prior encumbrance on the property, or for improvements of any kind, inured to the benefit of the owners, whoever they may be. What he paid for the experiment of organization and attempted sale to the Sanitary Dwelling Company, was his own affair, and did not enhance the value of the property."

After a careful review of the case Mr. Justice Barnard stated his conclusions as follows:

"First. I feel bound by the opinion of the Court of Appeals, as well as from my own view of the evidence, to declare that the deed of January 16, 1903, was not intended to convey a present absolute title, but was only to secure the defendant his share of the profits in the enterprise when he should perform his share of the work of building houses and making sales. .To the extent that he had performed his contract obligations, the security should be kept intact.

Second. As to the ten houses and the land on which they stand, the defendant has an undivided one-third interest under the two deeds executed to him, and to the complainants, Daniel and Redman. That title was, I think, intended to be absolute, subject to encumbrances.

Third. The contracts which were executed by the parties plaintiff and defendant, ought to be canceled, for there is no prospect of any amicable continuation of operations under the same, even if there was any desire by either party to do so.

Fourth. The defendant should convey to the complainant, the Northwest Eckington Improvement Company, the title received from it, by deed of January 16, 1903, on being paid, or satisfactorily secured, what, if anything, now remains due him on settlement of accounts on the lines hereinbefore indicated.

Fifth. If the defendant has become bound to pay any portion of the encumbrance of the said unimproved land, which is held by Mrs. Franz, the complainants should either obtain his release therefrom, or indemnify him against the same."

A decree in accordance with these conclusions was subsequently granted, from which this appeal was taken.

As to the item of $481.81, we agree with the view of the learned trial justice. This item benefitted the complainants in no way, and we do not think its repayment was contemplated by the October contract.

We also agree with the learned trial justice that the defendant is not entitled to be heard on the exceptions filed to the second report. Since every exception might have been filed upon the sub-

mission of the first report and disposed of at the first hearing, the defendant, by his failure then to act, waived his rights in the premises.

At the time the October contract was entered into the imminence of the railroad improvements had very favorably affected the complainants' land and, as found in our prior opinion, "the apprehension of its loss by foreclosure was greatly, if not entirely, relieved." It is apparent, therefore, that the only reasons for the very favorable terms upon which the defendant was connected with the enterprise was to secure his skill as a builder, and his financial assistance in improving the property to the end that it might be speedily marketed. And examination of the contract and the testimony in the case leaves no room for doubt on this question. We think it is equally plain that when this contract was entered into the erection of many more than five houses was contemplated. Let us here briefly scrutinize Campbell's conduct with a view to the determination of the question whether he carried out his part of the contract. He induced the complainants, upon the understanding that it was for his greater protection, to deed him one-third of the property at a time when he had merely commenced to earn it. His conduct in this respect, as Mr. Justice Barnard found, is material in the light of his subsequent conduct. He built ten houses and stopped. In the building of these houses he employed a superintendent of construction and did not, as required by his contract, personally "pursue such work industriously and with all the ability and skill he can bring to the work." The income upon the ten houses constructed was not sufficient to liquidate the fixed charges upon the balance of the property. This tends to sustain complainants' contention that the erection of many more houses was originally contemplated. It was the duty of the defendant in his building operations under the contract to keep a careful account of all receipts and expenditures, and to preserve all vouchers, that those interested with him in the enterprise might at any time ascertain the exact situation. This he did not do, and it was only after repeated efforts that anything like a satisfactory account was obtained from him. During the summer of 1903 it became apparent that part of the land of the complainant company was available for warehouse purposes, owing to its proximity to the railroad tracks. In November a contract was entered into, with the approval of Campbell, with one Malnati for the sale to him of a part of the land of the company suitable for warehouse purposes, the consideration being $15,200. $6,000 of this sum was necessary to secure a release from the general trust. When this sale was about to be consummated by deed Campbell arbitrarily demanded one-third of the surplus on the theory that he was the absolute owner of one-third of all the property. He also claimed that before the division he should be paid $4,000, which he contended he had advanced in the erection of the ten houses. At that time the complainants did not know the exact state of his account. The defendant refused to join in the deed unless his demands were satisfied and, further, threatened to bring about a receivership for the company. Thereupon an arrangement was entered into whereby

$4,000 was deposited to await the settlement of the controversy between the parties. One-third of the remainder, or $1686.54, was paid Campbell under protest, and the remaining two-thirds was received by the Improvement Company and expended by it in the liquidation of its obligations. This, in brief, is the history of Campbell's efforts to carry out his part of the contract under which he was to receive a one-third interest in a valuable piece of property. He contends, and so testified, that the original plan of building at least forty houses was abandoned by mutual consent. The complainants testified to the contrary; and while it is quite possible that the terms of the contract would have been satisfied by the building of a sufficient number of houses to create an income equal to the fixed charges on the balance of the property, the terms of the contract being somewhat ambiguous, we are satisfied from a consideration of the evidence before us that the failure to construct more than ten houses was attributable to the conduct of the defendant. After he obtained the deed to one-third of the property he seems to have been impressed with the idea that it was necessary for him to do nothing more than await developments. In fact he testifies that he was then entitled to the deed as a matter of right. Even assuming that the original building project, owing to changed conditions, was abandoned by mutual consent as he contends and that warehouses were to be built instead, the defendant is in no better position: for after the completion of the ten houses he did absolutely nothing and his conduct with reference to the Malnati sale indicated clearly the view he then entertained as to his obligations under the contract. When that sale was made, as above indicated, the income from the houses, which was the company's only source of income, was not sufficient to liquidate fixed charges. There were bills outstanding and no money was available for building purposes, and yet Campbell arbitrarily demanded payment of a sum which he claimed he had advanced over and above his receipts. Although under his contract he was fully protected he arbitrarily demanded and received one-third of the balance, or $1686.54, when that sum as he was informed and had every reason to know was needed to develop the remaining land. His conduct after the Malnati sale and prior to the bringing of the Bill was no better. From a careful examination of the entire record, we are forced to the conclusion that the decree was right. It is difficult to perceive wherein the defendant has been injured. He was to receive a one-third interest in certain property upon the theory of services performed in the improvement and sale of that property. To the extent that he has performed the obligation imposed upon him by the contract his interests have been fully protected by the decree; more he has no right to expect and more a court of equity certainly ought not to award him.

The decree will therefore be affirmed with costs.

Affirmed.

TUESDAY, *January 3rd, A. D.* 1911.

No. 2176, January Term, 1911.

CHARLES M. CAMPBELL, Appellant,
vs.
NORTHWEST ECKINGTON IMPROVEMENT COMPANY, T. CUSHING DANIEL, and SAMUEL C. REDMAN.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. JUSTICE ROBB,
January 3, 1911.

In the Court of Appeals of the District of Columbia, October Term, 1910.

No. 2176.

CHARLES M. CAMPBELL, Appellant,
vs.
NORTHWEST ECKINGTON IMPROVEMENT COMPANY et al.

Now comes the appellant by his attorney and prays an appeal from the decree passed herein on January 3rd, 1911, and that the penalty of the supersedeas bond on such appeal to the Supreme Court of the United States may be fixed. That the mandate be stayed accordingly.

JOHN RIDOUT,
Attorney for Appellant.

(Endorsed:) No. 2176. Charles M. Campbell, Appellant, vs. Northwest Eckington Improvement Company et al. Petition for alowance of appeal, to fix penalty of supersedeas bond and stay mandate. Court of Appeals, District of Columbia. Filed Jan. 19, 1911. Henry W. Hodges, Clerk.

MONDAY, *March 6th, A. D.* 1911.

No. 2176.

CHARLES M. CAMPBELL, Appellant,
vs.
NORTHWEST ECKINGTON IMPROVEMENT COMPANY, T. CUSHING DANIEL, and SAMUEL C. REDMAN.

It is ordered by the Court that an appeal to the Supreme Court of the United States in the above entitled cause prayed by Mr. John

Ridout, attorney for the appellant, be, and the same is hereby, allowed, and the bond for costs in the sum of three hundred dollars be, and the same is hereby, approved nunc pro tunc as of March 1st, 1911.

(*Bond on Appeal.*)

Know all Men by these Presents, That we, Charles M. Campbell of the District of Columbia, as principal, and Wm. H. Walker and Samuel Ross, as sureties, are held and firmly bound unto Northwest Eckington Improvement Co. T. Cushing Daniel and Samuel C. Redman in the full and just sum of Three hundred dollars, to be paid to the said Northwest Eckington Improvement Co. T. Cushing Daniel and Samuel C. Redman their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 1st day of March, in the year of our Lord one thousand nine hundred and eleven.

Whereas, lately at a Court of Appeals of the District of Columbia in a suit depending in said Court, between said Charles M. Campbell and said Northwest Eckington Improvement Co. T. Cushing Daniel and Samuel C. Redman a decree was rendered against the said Charles M. Campbell and the said Charles M. Campbell having prayed and obtained an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Northwest Eckington Improvement Co. T. Cushing Daniel and Samuel C. Redman citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof;

Now, the condition of the above obligation is such, That if the said Charles M. Campbell shall prosecute said appeal to effect, and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

CHARLES M. CAMPBELL. [SEAL.]
W. H. WALKER. [SEAL.]
SAM'L ROSS. [SEAL.]

Sealed and delivered in presence of—
JNO. RIDOUT.

Approved by—
SETH SHEPARD,
Chief Justice Court of Appeals of the District of Columbia

As of March 1, 1911.

[Endorsed:] No. 2176. Charles M. Campbell, Appellant, vs. Northwest Eckington Improvement Co. et al. Bond for costs on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Mar. 6, 1911. Henry W. Hodges, Clerk.

UNITED STATES OF AMERICA, *ss:*

To Northwest Eckington Improvement Company, T. Cushing Daniel, and Samuel C. Redman, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Charles M. Campbell is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard, Chief Justice of the Court of Appeals of the District of Columbia, this 6th day of March, in the year of our Lord one thousand nine hundred and eleven.

SETH SHEPARD,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted this 7th day of March A. D. 1911.
T. CUSHING DANIEL,
For Appellees.

Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 383 inclusive contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Charles M. Campbell, Appellant, vs. Northwest Eckington Improvement Company, T. Cushing Daniel and Samuel C. Redman, No. 2176, January Term, 1911, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 20th day of March A. D. 1911.

[Seal Court of Appeals, District of Columbia, 1893.]
HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

In the Supreme Court of the United States, Oct. Term, 1912.

No. 251.

CHARLES M. CAMPBELL, Appellant,
vs.
NORTHWEST ECKINGTON IMPROVEMENT COMPANY et al.

Assignment of Errors.

The Court below erred:

1. In holding that the Deed of January 16th 1903 from Ap-ellee Northwest Eckington Improvement Company to Appellant was

merely a conditional one dependent upon the performance of the agreement in accordance with which it was made.

2. In not holding said deed to be an absolute conveyance.

3. In setting aside the said Deed of January 16th 1903. In sustaining Appellees' exceptions to the Auditor's report as follows:

4. Exception No. 1.
5. Exception No. 2.
6. Exception No. 3.
7. Exception No. 4.
8. Exception No. 5.
9. Exception No. 6.
10. Exception No. 7.
11. Exception No. 8.
12. Exception No. 11.
13. Exception No. 24.

In overruling Appellant's exceptions to the Auditor's report as follows:

14. Exception No. 1.
15. Exception No. 2.
16. Exception No. 3.
17. Exception No. 4.
18. Exception No. 6.
19. Exception No. 9.
20. Exception No. 10.
21. Exception No. 11.
22. In adjudging a recovery against Appellant of $1237.65.
23. In not decreeing a recovery by Appellant of $5833.55.
24. In decreeing a reconveyance in favor of Appellee Northwest Eckington Improvement Company.
25. In not dismissing the Bill so far as it seeks cancellation of said deed of January 16th 1903.
26. In entering the decree appealed from.

JOHN RIDOUT,
Attorney for Appellant.

[Endorsed:] File No. 22,578. Supreme Court U. S. October Term, 1912. Term No. 251. Charles M. Campbell, Appellant, vs. Northwest Eckington Improvement Company et al. Assignment of Errors. Filed October 23, 1912.

Endorsed on cover: File No. 22,578. District of Columbia Court of Appeals. Term No. 251. Charles M. Campbell, appellant, vs. Northwest Eckington Improvement Company, T. Cushing Daniel, and Samuel C. Redman. Filed March 20th, 1911. File No. 22,578.

2

Office Supreme Court, U. S.
FILED.
APR 7 1913
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 251.

CHARLES M. CAMPBELL, APPELLANT,

vs.

NORTHWEST ECKINGTON IMPROVEMENT COMPANY, T. CUSHING DANIEL, SAMUEL C. REDMAN.

BRIEF FOR APPELLANT.

JOHN RIDOUT,
Attorney for Appellant.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 251.

CHARLES M. CAMPBELL, APPELLANT,

vs.

NORTHWEST ECKINGTON IMPROVEMENT COMPANY, T. CUSHING DANIEL, SAMUEL C. REDMAN.

BRIEF FOR APPELLANT.

Statement of the Case.

This is a bill by a corporation and two of its stockholders filed for the purpose of annulling a certain agreement and deed for the benefit of and on behalf of the corporation, and for an accounting for the benefit of and on account of the individuals.

The bill, divested of unnecessary verbiage, states:

That in March, 1902, the appellees, the individuals who are large stockholders in said corporation and the corporation itself, entered into an agreement with appellant for the formation of a sanitary dwellings company, the sale to it of

a certain 10½-acre tract owned by the corporation, and the improvement of the land by the erection of houses.

That thereafter this project was abandoned and the plan embodied in an agreement dated October 23, 1902 (Rec., p. 16), but executed some time later, was adopted.

That appellant entered upon the performance of this agreement, and after a certain progress had been made demanded as a condition of further proceeding that an absolute deed for an undivided one-third interest in the land should be executed to him, and that such a deed was executed by the corporation; that this deed, though absolute on its face, was really only intended as security for appellant's advances.

That he has failed to build all the houses he was bound to build, and has incurred large and unnecessary indebtedness; that upon an accounting it will be found that appellant is largely indebted to the individual complainants.

The bill prays cancellation of all instruments of writing and an accounting. It also requires an answer under oath.

The answer under oath denies every material allegation of the bill which is adverse to appellant and sets up full compliance with all the undertakings on the defendant's part, and contains a demurrer to the whole bill.

The trial court dismissed the bill so far as it sought cancellation and decreed an accounting. The complainants appealed from the whole decree to the Court of Appeals, where the decree was reversed and the cause remanded for further proceedings in conformity with the opinion. In the trial court a decree was passed in conformity with the mandate, and the reference to the auditor was proceeded with. The original report of the auditor appears in the record at pages 339 to 350.

The appellees filed exceptions to the auditor's report (Rec., pp. 351-353).

Upon hearing, certain of these exceptions were sustained, certain of them overruled, and the remainder withdrawn

(Rec., p. 353). A restatement of the account was ordered, the auditor's findings of fact being adopted. A second report was filed which, accepting the facts as found in the first report, restated the account upon certain principles laid down by the court (Rec., p. 354).

Certain exceptions to the second report were filed by appellant. When the case came on for hearing on these exceptions some were sustained and others overruled and a final decree was entered directing a reconveyance by appellant to the corporation appellee and awarding a money decree to the individual appellees (Rec., p. 365).

From this final decree an appeal was taken to the court below, where it was affirmed (Rec., p. 369), and the appeal from that decree brings the case here.

Assignment of Errors.

The court below erred:

1. In holding that the deed of January 16, 1903, from appellee Northwest Eckington Improvement Company to appellant was merely a conditional one, dependent upon the performance of the agreement in accordance with which it was made (Rec., p. 339).

2. In not holding said deed to be an absolute conveyance.

3. In setting aside said deed of January 16, 1903 (Rec., 374).

In sustaining appellees' exceptions to the auditor's first report as follows (Rec., pp. 353-4):

4. Exception No. 1.
5. Exception No. 2.
6. Exception No. 3.
7. Exception No. 4.
8. Exception No. 5.
9. Exception No. 6.
10. Exception No. 7.
11. Exception No. 8.

12. Exception No. 11.

13. Exception No. 24.

In overruling appellant's exceptions to the auditor's second report (Rec., pp. 356-357), as follows (Rec., p. 366):

14. Exception No. 1.

15. Exception No. 2.

16. Exception No. 3.

17. Exception No. 4.

18. Exception No. 6.

19. Exception No. 9.

20. Exception No. 10.

21. Exception No. 11.

22. In adjudging a recovery against appellant of $1,237.65 (Rec., p. 366).

23. In not decreeing a recovery by appellant of $5,833.35.

24. In decreeing a reconveyance in favor of appellee Northwest Eckington Improvement Company (Rec., p. 366).

25. In not dismissing the bill so far as it seeks a cancellation of said deed of January 16, 1903.

26. In holding that appellees' exceptions to the auditor's first report (Rec., pp. 356, 357) were waived by his failure to except to the auditor's first report (Rec., pp. 339-350) and by his failure to reserve an exception to the order of the court dealing with appellees' exceptions to said first report (Rec., pp. 353-4, and Rec., pp. 371, 372).

27. In entering the decree appealed from (Rec., p. 375).

ARGUMENT.

The assignments of error present the following contentions appellant:

a. That for the fatal misjoinder of parties and causes of action the bill should have been dismissed.

b. That appellees have an adequate and complete remedy at law.

c. That the proof upon which the deed of January 16, 1903, was held to be conditional and a mere security, to become operative upon performance of certain conditions subsequent, was wholly insufficient, and that the original decree in the trial court should have been affirmed.

d. That the bill fails to comply with the equitable rule that he who seeks equity must do equity.

e. That the proof before the auditor fully justified the first report, and that in so far as that report found facts it was ratified by the decree of the 10th day of June, 1909 (Rec., p. 353).

f. That said report showed performance and overpayment by appellant of at least $5,841.75, which should have been decreed to him.

g. That the principles upon which the account was restated were erroneous, the facts found by the first report being established and recognized by the order for restatement, and that in no event could there properly be a recovery of a money decree against appellant.

As the plaintiffs below endeavored to create an impression of bad treatment at the hands of defendant on the theory that it would be preposterous to assume that they would surrender a third interest in a very valuable property, "worth not less than $100,000," in return for defendant's services, a brief statement of the real facts and comment thereon has become necessary, particularly as these facts are not only dissociated, but in many cases buried in the voluminous record where they may be overlooked by the court.

In 1891 several gentlemen purchased something over ten acres of rough suburban land, nearly all of it much below grade, belonging to Jacob Franz, lying well out northeast of Washington in the vicinity of what afterwards became the site of the Catholic University. A deed of trust to secure Jacob Franz $37,500 purchase-money was recorded July 28 of that year (Rec., p. 284).

By certain processes of elimination, which need not be examined into here, the stock of the corporation which took title and which was named the Northwest Eckington Improvement Co., came into the possession of T. C. Daniel and S. C. Redman, who set themselves up as owners of the property. They were men of small means (Rec., p. 111). Daniel was a real-estate broker in a limited way and Redman had a position in a produce commission-house. When a street-car line was extended through the property they were able to make a considerable cash payment from the proceeds of a sale of land to the railroad company which Mrs. Franz says was possibly as large as $11,000 (Rec., p. 321). Other funds were derived by the company from the sale of lots which were improved in a few instances in a moderate way, leaving the remainder of the tract, however, without a house on it. The land was not even subdivided (Rec., p. 69).

In spite of the windfall from the railroad company and the sale of lots, by the time nine years had elapsed, during which Mr. Franz died, the company was several years behind

in interest and had been compelled, in order to satisfy Mrs. Franz to give her a deed to the property. This deed was to secure her beyond peradventure and to save her from the expense and trouble of foreclosure (letter of W. D. Hoover to Mrs. Franz, May 29, p. 226 and p. 321). Several years' unpaid taxes had accumulated against the property. It had actually been sold several times at a delinquent-tax sale and a tax title in 1902 was standing against it (Rec., p. 76).

These facts alone do not record accurately the depths of financial distress to which Daniel and Redman had descended. Daniel was persistently dunned by Mr. Wm. D. Hoover, then the trust officer and now the president of the National Savings and Trust Co., the agents of Mrs. Franz. Mr. Hoover says on page 91:

> "Mrs. Franz had repeatedly directed the company to insist on the payment of the overdue interest and in compliance with her directions a number of letters were written Mr. Daniel requesting and demanding a settlement of the overdue interest."

Again, on page 98, Mr. Hoover explains, speaking of the demands on Daniel:

> "The demands for that and other installments were quite numerous. * * * They were usually made by insisting in person to Mr. Daniel that they be paid."

On May 29, 1902 (note the date), Mr. Hoover sends this sharp reminder to Daniel (Rec., p. 226):

> "We have received another letter from Mrs. Franz directing us to record the deed to her unless your efforts to secure a new loan are successful. Unless we hear favorably from you within the next few days we shall be compelled to record the deed."

Spurred by this threatened catastrophe, Daniel had, a few months before the date of this letter, tried to induce Charles

M. Campbell to buy a third interest in the property for cash. Campbell declined for the reason that he found the ground mortgaged for $3,250 per acre, whereas a tract of much better ground, called Center Eckington, had sold within the year under foreclosure proceedings for only $2,800 per acre (Rec., p. 72).

In 1903 Samuel Ross bought between 70,000 and 80,000 feet in this Center Eckington tract. He does business in Washington at the corner of 11th and G streets under the firm name of Barber & Ross, is a large operator, a man of wealth and high character. On page 102, in testifying to values, he puts double the value on the Center Eckington tract over the ground in suit. An attempt to prejudice this valuation was made in a characteristic attempt by the plaintiff below to bring out the fact that the Center Eckington tract was involved in a suit. But the fact developed that the party bringing the suit was this same man Daniel, which suit was lost not only in the court below but on appeal (Rec., p. 105).

Showing further the wisdom of Campbell in not buying into the property at that time at even the face of the trust and interest is the testimony of Mrs. Franz, who says one of the reasons why she would not put the deed Daniel and Redman had given her on record was because of the low value of the property from about 1900 to 1902. In other words, she did not feel that the property would pay out! (Rec., p. 321).

But Campbell suggested to Daniel prior to March, 1902, that a possible solution of the problem would be the organization of a sanitary dwellings company, to build two-family houses for people of small means similar to those of the popular and very successful company of which General Sternberg was the president. Daniel caught eagerly at the idea and urged Campbell to undertake the organization of such a company. Such a contract was entered into in March, 1902 (Rec., p. 11). The company was organized, composed

of reputable men, called the Sanitary Dwellings Co., and issued a prospectus wherein it was proposed to build as many as forty houses (Rec., p. 119). The plan failed after Campbell had expended $481 of his personal funds in expenses.

The organization of this company, however, served one very useful purpose as showing what Daniel and Redman thought of the value of this land in 1902. They promptly gave Campbell an option on the ground, to be assumed by the Sanitary Dwellings Co. (Rec., p. 270), and agreed to deed the property to the company *without the payment of a cent in cash.* Two-thirds of the price was to be paid in the stock of this paper company, which stock was to be non-participating in any possible dividends for a period of three years and was not even to carry the privilege of voting during the same period. The remaining one-third was to be paid from the sale of stock by the company after the company had reserved 75 per cent of such receipts (Rec., p. 270). So eager were Daniel and Redman to unload the property on the Dwellings Company, even upon such nebulous prospects of payment, that a deed to the property was actually prepared and executed (Rec., p. 191).

To show still more conclusively their anxiety to get rid of the property during that summer of 1902 Daniel undertook another bit of characteristic double-dealing with the Trust Company. He wrote a letter to the president, Mr. Thomas R. Jones (Rec., p. 231), and enclosed in it a letter *addressed to Mr. Jones, but intended for Mrs. Franz.* This enclosure is printed out of its order on page 230. In the letter intended for Mr. Jones, in discussing the Sanitary Dwellings Co. prospects, he says, with very evident truthfulness, under date of July 24, 1902:

> "The property *has given me a great deal of trouble and worry and I would hate to have it thrown on my hands again.*"

During this summer Daniel, being in constant fear that Mrs. Franz would be as good as her word and put the deed on record, induced Campbell to advance $500 to Mrs. Franz through Daniel, as set forth in a memorandum printed on page 191.

Having received the money three days before the agreement was signed, Daniel made haste to arrest, if possible, any adverse action by Mrs. Franz. In a misleading letter of June 16 he tells the Trust Company the property has been sold, the wish evidently being father to the thought. On the strength of this misstatement, the payment of $500, and the further misstatement that there was delay in the certificate of title, he asks for a necessary and much-desired extension of time for 60 days. He never repaid this $500, nor the $481 it cost Campbell for expenses of the Sanitary Dwellings Company, in spite of the last sentence in the agreement, on page 191, in the handwriting of Daniel, that "all monies advanced by said Campbell in the *handling of the property* shall be returned to him out of the first sales." The auditor allowed both items.

Mr. Hoover of the Trust Company, under date of June 19, summarizes the situation for Mrs. Franz in a letter which is interesting reading (Rec., p. 226). He tells her of the receipt of the $500, that the principal and interest of the debt is now $32,600, and that Daniel requests that the statement of the debt be placed at $32,500, but to be paid at the end of sixty days. Mr. Hoover adds:

> "which we regard as a very good compromise considering the amount of trouble which would come to you in case you were compelled to buy in the property. * * * This offer of Mr. Daniel we have succeeded in getting only as a result of *persistent efforts* through the mail and by telephone."

At the time when this hope was inspired in the Trust Company Daniel knew the Sanitary Dwellings Company was a failure. But he used the Dwellings Company and the $500

to delay for another 60 days the apparently inevitable foreclosure.

But by September 17, nothing having been heard from Daniel and the overdue interest now approximating $7,000, the Trust Company reports to Mrs. Franz as follows (Rec., p. 227):

> "My Dear Mrs. Franz: I met Mr. Daniel on the street and ascertained that his proposition is to be presented to us upon the return of Mr. Campbell to the city. The proposition appears to contemplate the payment of about $6,000 and the securing of a release of several lots from the deed of trust for the purpose of improving the same with substantial dwellings. He informed me that the only matter now unsettled is the exact form the proposition is to take and that details will be arranged within the next ten days. As soon as we receive some proposition in writing from him we will advise you of it, and, unless we do receive such proposition on or before the 15th of October we shall write him a letter informing him that unless payment is made on or before Nov. 1st a sale of the property will have to take place to pay the debt now due.
>
> "W. D. Hoover,
> *"Trust Officer."*

In the meantime Daniel, as is indicated by his story to Mr. Hoover, was trying to again enlist the services of Campbell in a desperate effort to save the property. On August 6 (Rec., p. 170) he encloses to Campbell the letter received from the Trust Company. On August 19 he writes Campbell from New London, Conn.:

> "I of course agree with you in reference to your not being expected to spend more of your individual money. Am willing to borrow money as you suggest."

How he afterwards broke this promise will be discussed elsewhere. When this letter was written in August he knew

that the forbearance of the Trust Company and Mrs. Franz had been exhausted. Something must be done if the property was to be saved, *and at once*. That something was the offer to Campbell of a third of the property if he would save it. His philosophy on that occasion is preserved at the bottom of page 109. He said *it was better to save two-thirds than to lose all.* And no one knowing the facts and knowing Daniel would have disagreed with him.

He had not reached the decision any too soon, for on October 23 the expected foreclosure proceedings were ordered. This *was the same day* on which the agreement with Campbell, drawn somewhat clumsily by the latter (Rec., p. 74), was signed, although it was not executed until the stockholders had held a meeting in Alexandria, Va., and ratified the contract. (Stated by Campbell, p. 74, and by Daniel, p. 251.)

Campbell had insisted upon the stockholders meeting to legalize the large alienation of ground. It is difficult, if not impossible, to give a sound reason for such a stockholders' meeting on any other theory. None had been held during the previous eight years. The minutes of that meeting, confirming the alienation of one-third of the property for the purpose of saving it, were in the possession of Daniel and Redman. These minutes were repeatedly called for by the defendant below but never produced (Rec., pp. 74 and 77). What would they have disclosed if produced? Certainly nothing that would tend to confirm Daniel or he would promptly have availed himself of them.

It is known in regard to this stockholders' meeting that Daniel took the ground that it was unnecessary for the reason that the company had power to alienate ground and had already done so in the sale of lots (Rec., p. 163). But Campbell insisted. While this discussion was under way Campbell was visited by his brother, a lawyer, who had been a judge. As the question was a legal one that both sides presumably wanted settled rightly, Campbell had Daniel

come out to the former's house, where the whole subject was threshed out in the presence of Judge Campbell.

In regard to this important confirming testimony of Judge Campbell (Rec., p. 163), notice is directed to the fact that Daniel, in his interpretation of the contract, is nowhere supported by a single witness, not even by his partner, Redman, while Campbell, in addition to his answer under oath, which is not waived, has this strong supporting witness. Daniel says he went out as stated, but that the subject discussed was Armat Company affairs. We will have something to say elsewhere on the evidence supplied by himself in this record on the question of his veracity. Judge Campbell's testimony is confirmed by the fact that the stockholders' meeting was actually held shortly after in accordance with his advice.

The contract of October 23, 1902, having been written by Campbell on the very day when Mrs. Franz notified the Trust Company to proceed and foreclose, it will be profitable to examine the task Campbell had assumed when he undertook to save the property, which at that date had reached such a low ebb in value that Mrs. Franz was afraid to put her security deed on record for fear the property would not pay out (Rec., p. 321). He guaranteed payment of the following sums, his guarantee being accepted by the Trust Company:

The principal of the debt (Rec., p. 91)	$25,911.92
Interest unpaid for over 4 1/3 years (Rec., p. 91)	6,588.08
Unpaid taxes and redemption charges (Rec., p. 185)	1,080.46
Payment to clear title (Rec., pp. 76 and 178)	300.00
Advances already made by Campbell (Rec., p. 185)	481.00
	$34,361.46

On December 2, 1902, he signed a guarantee of the payment of the first two items and thereby secured an extension of the trust for two years (Rec., p. 91). The third item he

paid in two checks, one for $957.55 and one for $122.91 (Rec., p. 185). The fourth was paid December 31 through Ralston and Siddons (Rec., pp. 76 and 178). The last was paid in an advance of $500 to Mrs. Franz to prevent her from foreclosing, through Daniel, June 17, 1902 (Rec., 185), and receipted for in the agreement on page 191, which $500 is included in the $25,911.92 and a payment of $481.-81, the costs of the Sanitary Dwellings Company and which was to be returned (Rec., p. 191).

Daniel tries to make it appear that the house building was the important element in the transaction, whereas it was only an incidental. That was a matter in which Campbell, having come into the case as a guarantor of extensive obligations, was more interested in than Daniel and Redman, for the reason that it was a matter of prime importance to the solvent member of the copartnership, who had been accepted by the Trust Company at a time when the names of the other two partners were rejected, to make the property carry itself. Being vitally interested, it did not require any contract to cause him to address himself earnestly to the problem. That is the reason the contract is so elastic on the point of number of houses. Only five houses are actually provided for in the agreement of October 23 (paragraph 7, p. 17). When these were built it was only necessary for Campbell to object to building more to terminate the house building feature of the contract, because no more were to be built "unless such a course is warranted by the results and approved by the judgment of the parties to this agreement." The same number (five) is provided for in the contract which Campbell signed guaranteeing the trust (Rec., p. 46).

The 40-House Paper.

On this point an entire misapprehension of the number of houses to be built occurred in the court below owing to the voluminous nature of the record and the studied attempt of the opposing counsel in that court to befog the issue (Mr.

Justice McComas dissenting). The 40-house paper (Rec., p. 19), without date and without signature, which was taken as being a part of the agreement of October 23, had no part or connection with it, and consequently should not have had any weight attached to it by the court. Had counsel for appellee considered that any importance would be attached to this paper he could have successfully demonstrated that it pertained to an entirely different and preceding transaction (the Sanitary Dwellings Company).

That paper was introduced on page 18, where Daniel first testifies:

> "That was one of the main features of the enterprise which was contemplated in the *Sanitary Dwellings enterprise.*"

That was the truth, but his counsel leads him to a more satisfactory answer, as follows:

> "Q. Do you know when he brought you that?
> "A. That was about the time the contract was signed up, Nov. 23, 1902."

This was a mistake in date which his counsel promptly led him to correct:

> "Q. That contract bears date Oct. 23, 1902, and was it executed at that time or later?
> "A. *I am not certain about that.* I can't recall now. That was part of the contract."

Here are two answers mutually destructive, but that the first one is correct and that the 40-house memorandum pertained to the Sanitary Dwellings Company enterprise undertaken in the preceding spring is shown by Daniel's counsel in his cross-examination of Campbell, on page 119, where this passage occurs:

> "Q. You wrote this paragraph Mr. Campbell, that 'the company confidently offers this stock at par as an attractive and safe investment. It is believed by

> the officers that not less than 6% will be earned from the date when the first *forty houses* are finished, and not less than 5% from the date of subscriptions.' At that time your design was for the Sanitary Dwellings Company to build not less than forty houses?
>
> "A. The language you quote there is applicable to the Sanitary Dwellings Company."

In the preparation of that prospectus, which, as events turned out, misstated no facts, but rather understated them, it was necessary to work out the probable result of the building of houses by that company. So an estimate was made up for several different numbers of houses up to 40. The number 40 was taken for use in the prospectus and the defendant never realized when testimony was being taken that an attempt would be made to show that that unsigned and undated loose memorandum was a part of the contract of October 23. It is at such wide variance with the requirements of the contract that *five* houses should be built that it seems preposterous to consider it as changing the contract itself. On page 79 Campbell says:

> "Those were some fanciful figures worked up earlier in the summer when we had the idea that the houses would cost about $2,800 apiece. An examination of the paper itself will show that the price we figured these houses at at the time was $2,800 apiece whereas later we advanced the price to $3,300, which was the price we had settled upon at the time the contract was drawn, or about that time."

Daniel states in the bill:

> "Said Campbell represented to the complainants that said ten houses would cost about $33,000" (Rec., p. 4)."

An examination of the paper will show, at the middle of page 19, that the price there calculated is $2,800. This was the price that the sanitary dwellings erected by General

Sternberg's Company cost. On page 70 Campbell says, concerning the General Sternberg houses:

> "I reported to him (Daniel) that Gen. Sternberg said the houses cost from $2,700 to $2,900 apiece, about *an average of $2,800 apiece.*"

Inasmuch as this was before the organization of the Sanitary Dwellings Company it completes the proof that Campbell's testimony is true—that this paper containing the reference to 40 houses at $2,800 apiece referred to the earlier enterprise and had no connection with the contract of October 23, 1902, at which time a decision was reached that the houses to be built under that contract were to be a better grade, to wit, to cost $3,300, as asserted by Daniel and Redman themselves in their bill and which the auditor found cost a little more than that, owing to the fact that cellars were introduced in one row and one house enlarged (Rec., p. 344 and p. 791).

So much for a paper that was injected into the case for misleading purposes and which, owing to peculiar circumstances, explained above, was not even discussed by counsel for Campbell.

The Deed.

The salient facts of the record having been separated from the mass of irrelevant matter under which they are buried, it now becomes important to show what Campbell had done when that deed was recorded and what remained to be done. He had done these things:

Guaranteed the principal of the debt, $25,911.92.

Guaranteed the payment of overdue interest, $6,588.08.

Redeemed the property from tax sales, $1,080.46.

Made payment to clear the title, $300.00.

Signed notes for building loan, $12,500.00.

Signed building contracts obligating himself for five houses.

Superintended the construction of five houses and had them two-thirds built on January 19, when the deed went on record.

In the face of this record, every item of which can easily be verified from the references, it is asserted that Campbell was imposing on Daniel and Redman when he found they were totally disregarding their contract to supply two-thirds of the funds and bank credit and demanded a deed against the heavy obligations he had assumed and cash advanced. So little remained to be done of all he had contracted to do that had Campbell died on January 19, 1903, when that deed went on record, his estate could have been held for any lapses of the contractors and recovery had in a suit at law, *leaving no unsettled question for a proceeding in equity.*

Referring to the last item in the above list, the bricklaying on the first row was finished February 21, 1903, as the last payment to A. M. Cowell, the contractor for the brick work (on page 186), discloses. His first payment on the second row indicates that the foundation was in, and a start on the bricklaying on that row was made April 3. Under the contract this second row need not have been started had Campbell opposed it. So when the deed went on record January 19 Campbell had obligated himself for the row required by the contract and had it well on towards completion.

Daniel's and Redman's Bad Faith.

When Daniel and Redman were so hard pressed by the Trust Company and Mrs. Franz in the summer of 1902 and Daniel industriously opened negotiations with Campbell to save the property, Campbell, having already had some experience of the limited character of Daniel's cash resources, wrote him at New London, Conn., as follows (Rec., p. 85), which letter was called for and not produced by Daniel:

> "particularly in regard to the matter of my putting up all the money for this proposed enterprise, as I

had done in the case of the Sanitary Dwellings Co. And I told him I could not do it if that was the proposition. In reply to that letter he wrote me under date of Aug. 19, 1902."

A reference to the New London letter shows the definite promise on Daniel's part (Rec., pp. 170, 171):

"I of course agree with you in reference to your not being expected to spend more of your individual money."

On page 77 Campbell reports an inquiry he made of Daniel at this stage:

"I had a very particular conversation with Mr. Daniel on that subject as to his ability and Mr. Redman's ability to carry their end of this proposed financial deal. He told me Mr. Redman was an officer of the butter company and had connections with the Lincoln National Bank and that he was able to take care of his end of the deal. And as to Mr. Daniel he said he had connections with the Second National Bank and he was quite sure he could take care of his end of it. I told him this was important as I could not undertake to advance money as I had in the case of the Sanitary Dwellings Company and I wanted this understood in advance."

Paragraph 6 of the contract (Rec., p. 17) provides that Campbell is to join the other parties to the contract

"in the making or endorsing of any notes that may be required in negotiating the necessary loans for the making of said improvements and in paying off the loan of $32,000 now due on said property. In doing this account is to be taken of all monies and interest he has already advanced."

Also see page 77.

Redman's Admissions.

Redman calmly admits in his testimony that he never helped to bridge the gap between the amount of the building loan and the cost of the houses, as disclosed by the auditor. The state of Redman's credit at the Lincoln National Bank, where he kept his account, is fully disclosed by his admission that he applied there for a loan of $1,000 and was refused (Rec., p. 51). He endorsed a little note for $375 at the American National Bank, the only sum he raised, and made such complaint about it that Campbell returned the money to him. He even threatened to bring suit for it in 1904. On cross-examination the following occurred:

> "Q. Do you contend that Mr. Campbell was obliged to advance all the money for the building of those houses not furnished by the building loan?
> "A. I considered it so, according to the contract."

Daniel's Amazing Record.

Daniel's fair promises at the beginning, during the summer of 1902, have just been recounted. He did not want Campbell to spend more of his individual money. He is willing to borrow money, as Campbell suggests (Rec., p. 171). He suggests, in all deference to Campbell, as an only source of money and bank credit:

> "If we can borrow $3,000 each on the houses to be built we could finance it so as to pay $2,800 for the five lots out of this loan and carry on the building operation."

Why should such a suggestion be made to a man who, it was claimed afterwards, was acting only in the capacity of a burden-carrier for these two men, saving their property from execution, building houses for them, lending them his bank credit, and guaranteeing the payments of their large

debts, in return for which he was to be secured by the execution of a deed to a *third* of the property, without any provision, if Daniel had his way, for the return even of his interest to him?

In the summer of 1903 Daniel thought it would be wise to get rid of his old friend Redman for the reason that he was weak financially, which he promptly denied when confronted with it in the record. Daniel had become very much impressed with the importance of this ground as railroad frontage, Congress in the meantime having passed a new railway-terminals law that consolidated the railroad terminals in that region. Samuel Ross, one of the most reputable witnesses in the case, puts the date at after April, 1903. He bought between 70,000 and 80,000 square feet next door to the south and says he made it one of the conditions that railroad facilities would be given; otherwise the deposit was to be forfeited. He says matters were very uncertain at that date (Rec., p. 102).

But during that summer of 1903 Daniel went to work on the sale of the Redman interest, which had been optioned at 15 cents a foot. He particularly tried to sell it to Thomas R. Riley. The series of letters in which he reported progress to Campbell, who was at the seashore, are conclusive that he at that time regarded Campbell as an owner unqualifiedly of the interest conveyed by the deed, and that the complaint set up as to the deed was an afterthought (Rec., pp. 173-176). The very first one is enough. He says August 11:

> "I have made up my mind not to wait on anybody, but try and push this deal through. * * * I made some observations and enquiries in Baltimore and was surprised at the size and number of warehouses and how important they have become as factors in the commercial business of the large cities. Everything being done by the railroads are (*sic*) benefiting (*sic*) *our* Eckington property and I have new enquiries as to railroad frontage on *our* property."

Certainly very inappropriate language to use to a man who, it was afterwards claimed, had neither part nor lot in this real estate here called "our property." The option agreement with Redman set up who owned the property. Daniel makes any such declaration important by stating unequivocally on page 238, when handed this paper, that he recognized it and that it was *prepared* by *himself* and *Campbell*. An examination of the paper itself, on page 285, discloses the statement in the preamble:

> "Whereas the parties hereto are the members of an incorporated syndicate *owning* a certain tract of land described as 'Northwest Eckington' and containing 10½ acres more or less, each of the parties here *owning* an interest in said company."

The parties to this agreement were Samuel C. Redman, party of the first part, and T. C. Daniel and Charles M. Campbell, parties of the second part. Paragraphs first and second provide that Redman agrees to "sell, assign, and transfer" to Daniel and Campbell his interest in the property, the latter to assume Redman's obligations under the deed of trust. This deal lapsed for reasons that need not be set out here, none of which included a change of mind on Redman's part. But there is no doubt this paper would have provided for the conveyance had the transaction been completed.

Both the language and the circumstances connected with its preparation indicate still further that as late as nearly a year after Campbell had joined the enterprise there was no question in Daniel's mind of Campbell's connection with the enterprise *as owner*. Certainly such a document should have more weight than any that could be assigned to an unsigned, undated, unauthenticated, and disproved memorandum, known as the 40-house paper, which had long before ceased to have any connection with the case.

About the time of the sale to Malnati, that brought in $15,200 in cash, in the winter of 1903-4, thus indicating a

great enhancement in the value of the ground, owing to the railroad rumors becoming settled in the affirmative, Daniel's views took on a new perspective. The atmosphere became charged with a feeling of antagonism. A request for an accounting which Campbell as the creditor party made in writing (Rec., p. 107) was ignored. A rough list of checks that was drawn off by Campbell from the stubs of his check-books to indicate that the enterprise owed him several thousand dollars and contained one or two duplications to which Campbell called Daniel's attention was criticised. Campbell called Daniel's attention to the promise written into the contract of June 19, 1902 (printed on pp. 191 and 192), in Daniel's handwriting, that "all monies advanced by said Campbell in *handling* the property in question *shall be returned to him out of the first sales.*" Here was money coming in from the Malnati sale and Campbell wanted his advances to the enterprise *beyond his share* repaid (Rec., p. 86). Daniel would not agree. Some feeling developed, in which Daniel claimed that the enterprise did not owe Campbell anything, but, on the contrary, that Campbell was in debt to the enterprise. Campbell regarded this as a very easy way of paying the debt. Daniel further criticised Campbell's list of checks and called it an account. Campbell asserted that it was in no sense an account, but a list to be checked up from, with which to begin an account.

So the way was prepared for the beginning of this suit and the bill was sworn to on the 4th day of February, *less than thirty days* after the settlement had been effected with Malnati. As it probably took thirty days for Daniel to formulate his plans and prepare his line of attack, it is likely he took steps to bring his suit immediately after the $15,200 from Malnati were assured, *probably the same day.* Here is the explanation of Daniel's real motive.

When Daniel found he needed Campbell's help no longer he was not restrained by any compunctions of conscience or gratitude, but immediately set about arranging a story

that would not only deprive Campbell of the emoluments to which he was entitled for saving the property, but would even deprive him of any return of actual money advanced by setting up the statement, proved false by Auditor Payne, that, instead of the enterprise owing Campbell, the latter was indebted to the enterprise "in excess of $5,000" (bill, p. 6, paragraph 6).

Starting with this false statement, he tried to reinforce it with many other equally untruthful in the course of the hearing. Counsel deplores the necessity of calling attention to such facts, but his duty to his client requires the service, and justice demands the truth. Counsel goes into the matter briefly on the theory that if a witness is proved deliberately false in one thing he should be given no credit in any unverified statement that affects his interests. Maxims are believed to crystallize the experience of the ages and therefore should not be considered trite through frequent repetition. The one which applies to this phase of this case—*falsus in uno, falsus in omnibus*—hardly needs quotation.

Case I.—Smarting under the charge that he had contributed nothing in cash to the enterprise when it was badly needed, Daniel, on pages 33 and 34, introduces the following checks (see also p. 63) which he claimed to have paid into the enterprise:

May 21, 1903.....	$300	drawn to	C. M. Campbell.
" 23, "	150	" "	A. M. Cowell.
Sept. 23, "	100	" "	cash.
Nov. 2, "	250	" "	C. M. Campbell.
" 19, "	100	" "	cash.
" 24, "	200	" "	A. M. Cowell.
Dec. 2, "	3.63	" "	cash.
Dec. 4, "	107.95	" "	A. M. Cowell.
	$1,211.58		

In bringing them into the record counsel said (Rec., p. 33):

> "Counsel for the complainant states that in offering these checks he is not offering them as some private matter between Mr. Daniel and Mr. Campbell but in support of the allegations of the bill alleging financial advances of money made by complainant, Daniel, to Mr. Campbell in, about and for the building operations as the complainant Daniel understood it."

Campbell alleged that these amounts were all repaid to Daniel, as he well knew, except the one for $200, which was paid out of the Malnati funds and with which he charged himself (Rec., pp. 266 and 346, bottom). He also admitted the $3.63. This leaves six checks. On page 42 five checks were submitted to Daniel signed by C. M. Campbell and each bearing Daniel's endorsement as payee:

May 25, 1903.....	$300	drawn to Daniel.		
" " "	150	" " "	and Cowell.	
Nov. 12, "	250	" " "		
Dec. 23, "	100	" " "		
Dec. 5, "	107.95	" " "		

Leaving one check for $100 to be accounted for.

Daniel then began to equivocate and admitted there might be some mistake which could be corrected when the account was stated. Later, evidently feeling uncomfortable under the facts already disclosed, and not being able to see that his only chance to escape from the situation with honor was to frankly admit he had been mistaken, on page 55 he says he was mistaken about the $107.95 which had been wrongly substituted for one of $100, about which he gave the exact particulars to show that his recollection was intact. But on page 106 Campbell also produces a return check for this amount (printed on p. 178), bearing Daniel's endorsement. By a reference to the auditor's findings it will be seen that the total credit allowed Daniel for cash advanced by him is one item of $200, the check on the Malnati money alluded to above. And in the 29 exceptions filed to the auditor's re-

port by complainant he abandons his claim to a credit on all the disputed checks alleged to have been advanced to him, excepting the one drawn to Cowell's order for $150, although Campbell's check repaying him this amount bearing date of May 25, 1903, and bearing his endorsement, was identified by him on page 42 of the record!

Case II.—On page 37 the following occurs:

> "Q. Mr. Daniel at the last session I asked you to produce the checks representing advances that you had testified you had made to Mr. Campbell during this building enterprise and you referred to one of $600, a check which you said you had not been able to find. Have you found it?
> "A. Yes, sir.
> "Q. Is that it?
> "A. Yes, sir, that is the check."

This was a note signed by Campbell and discounted at the Second National Bank by Daniel, supposedly in aid of the enterprise. However, he required Campbell to repay him the full amount of the note (a payment having been previously made by Campbell) upon threatened suit, which was not brought, although he says it was. The amount deducted from the face of the note and interest was $100, which covered cash borrowed by Daniel from Campbell (Rec., p. 108). These particulars are brought out on cross-examination of Daniel (Rec., p. 43), Campbell's version (Rec., p. 303). Daniel's suit for the $100 balance claimed against Campbell was afterwards brought and lost by Daniel. The auditor disallowed the entire claim (Rec., pp. 344-346). In the face of Daniel's admissions on cross-examination that he was repaid all but $100, he yet put in a claim before the auditor that he advanced this $600 to the enterprise, which the auditor, of course, disallowed.

Case III.—On page 38 Daniel under cross-examination testified as follows, the date being 1902, as he explains at the

bottom of page 38. This testimony was early in the case before the disclosures that afterwards came from the Trust Company:

"Q. At that time what was the purchase money incumbrance on the property?

"A. A little over $32,000.

"Q. How was it as to being overdue?

"A. The original trust was given in 1892, payable on or before two and three years, and it had been allowed simply to remain *and interest being paid on it* up to the time when this interview occurred.

"Q. Was the interest overdue at that time?

"A. I think it very doubtful whether there was any interest overdue at that time at all.

"Q. What is your recollection about it?

"A. My recollection is that I had received several communications from the Trust Co. that held these notes for Mrs. Franz, and that there were a good many payments that I had made on the principal to Mr. Franz during his life, that had not been credited on any statement that I had received from them at that time.

"Q. Is it not a fact that the Trust Co. was at that time pressing very vigorously for the payment of that note?

"A. They were under a misapprehension that there was interest due upon it.

"Q. And that you had found it difficult to make provision to meet the demands of the Franz estate?

"A. At that time there was not so much inconvenience as there had been in carrying that property through 6, 7 or 8 years of depression following the panic of 1893."

On page 48, under the guidance of his own counsel, he amplifies:

"Q. Mr. Daniel when the contract was made was there any interest due on the Franz trust?

"A. No, sir. I went over the account with Mr. Howard the treasurer of the Trust Co. and he found out that he had not given us credit for a good deal of money that had been paid to Mrs. Franz for the

release of the lots, *the result* being he afterwards sent me a check for over $200 and some trust notes he had in hand."

It will be noticed that in the first statement Daniel says that the "good many payments" that were not properly credited were made to Mr. Franz during his lifetime. In the second that "a good deal of money" had been paid to Mrs. Franz and not credited. The $200 item is brought in to befog the situation, the fact about that being that some trust notes were left with the Trust Company to be collected and the proceeds credited on the indebtedness. Some little money was collected and overlooked by the Trust Company and afterwards returned to Daniel, to the amount of $248, with an explanatory letter in which were enclosed the uncollected notes. This letter will be found at page 67.

Now what were the facts so seduously covered up and distorted here by Daniel?

Wm. D. Hoover, now president of the National Savings & Trust Company, says, on pages 90 and 91, that the debt stood as follows on December 2, 1902:

Principal, including interest	$32,938.66
Principal	25,911.92
Leaving overdue interest	$7,026.74

He says further that Howard and Daniel had reached an agreement during the preceding summer that the principal and interest should be put at $32,500, from which the payment made on June 16, 1902, by Campbell through Daniel (allowed by the auditor as a credit to Campbell) was deducted, leaving a net balance of principal and interest of $32,000. So the "good many payments" that had been made to Mr. Franz during his lifetime and not credited, and the "good deal of money" that had been paid to Mrs. Franz and not credited, and the alleged overpayments represented by the return of $248 by the Trust Company, all combined to-

gether, made a total deduction of only $438. And Mr. Howard, the treasurer of the Trust Company, says, on page 207, that this allowance was excessive. His statement is: "According to our opinion the interest ought to be more than that. That was the agreement arrived at." Mr. Hoover's opinion of the allowance is expressed in his report of the transaction to Mrs. Franz under date of June 19, 1902 (Rec., p. 226), in which he says the amount has been fixed at $32,500, *to be paid at the end of sixty days*, which he considers a very good compromise, considering the amount of trouble that would result if Mrs. Franz were compelled to buy in the property in foreclosure proceedings.

In the face of this record, on page 98, Mr. Hoover is gravely asked:

> "On July 28, 1902, Mr. Hoover, do I understand you to say that an installment of interest was due and unpaid?
>
> "A. Yes, sir, I do say that. And moreover that a large amount of interest preceding that was also due and unpaid."

An interesting illustration of overdone cross-examination.

Case IV.—In September, 1902, prior, of course, to the signing of the October, 1902, contract, Campbell needed $2,000. As he was in good credit at the Citizens' National Bank, he asked Daniel to join him in the note, so it would be a two-name paper. The discount was obtained from the president of the bank, Mr. Johnson (Rec., pp. 89 and 318), who was a good friend of Campbell. The money was used by Campbell personally (Rec., p. 89), and could have been easily obtained without Daniel's endorsement, which was valueless, except that it made the second name.

On page 15 Daniel asserts that the loan was obtained by his endorsement of the note on *March* 23, 1902, and that Campbell got it by virtue of Daniel's supposed relationship with the late Senator Daniel (a cousin, three times removed)

and friendship with C. C. Glover *from Mr. Moore,* the *cashier,* and used it in the Sanitary Dwellings enterprise.

On page 89 Campbell supplies the right date, months after the Sanitary Dwellings was dead, says the money was not secured from Moore, but from President Johnson, and denies all Daniel's assertions.

On page 240 Daniel reasserts all the facts but one, adding:

> "And with the exception of the date the testimony I gave with reference to that note is absolutely correct."

On page 259, under cross-examination, he began to equivocate by repeating the story except that he dropped the name of Moore and substituted the name of President Johnson, which had been supplied by Campbell, adding that Johnson called up a red-headed man by the name of Olds. When asked particularly as to his statement in regard to the cashier being Mr. Moore he fenced and said he would not swear to that.

On page 291, Capt. John H. Moore, vice-president and actual manager of the Citizens National Bank after its consolidation with the West End Bank in March, 1903—just a year after the date given by Daniel—testified that he was not connected with the bank in 1902, that he found the note of the preceding September there when he took charge of the bank, and that in approving the note "I relied on Mr. Campbell entirely."

In regard to the alleged Glover and Daniel incident he stated, "I am very positive Mr. Campbell never made any such statements to me." He said he instituted methods of getting reports on all who dealt with the bank. Then this occurs in the cross-examination (Rec., p. 293):

> "Q. Did you get a report on Mr. Campbell?
> "A. I did, but before getting that I had inquired of our directors and also of a number of our depositors in regard to Mr. Campbell."

At the top of page 318, Edson B. Olds, then the assistant cashier of the Citizens National Bank, now the treasurer of the Union Trust Company, when asked if Daniel had been introduced to the bank as described by Daniel replied, "No, sir." This then occurred under cross-examination:

> "Q. Are you prepared to say on the occasion when this discount was made, $2,000, you were not either called or sent for by Mr. Johnson and this note was signed by Mr. Campbell and endorsed by Mr. Daniel right there, the parties being the president of the bank, yourself, Mr. Campbell and Mr. Daniel?
> "A. Well, I have no recollection of it.
> "Q. You would not swear it was not so?
> "A. Well, *I don't think it was.*"

On redirect he said it was not customary for Mr. Johnson, the president, to call upon the assistant cashier to pass upon discounts.

Case V.—Daniel tried to deprive Campbell of all credit for money advanced. On page 49 this statement is made by Daniel to his own counsel:

> "Q. Mr. Daniel, did Mr. Campbell pay any interest under this contract at the time it was signed and executed?
> "A. No sir.
> "Q. Did he ever, out of his own pocket, pay any interest on that deed of trust, or any part of the principal?
> "A. Not one dollar."

In connection with this attempt to lend emphasis to an untruthful statement let us turn to page 236, where Campbell's statement that he paid $500 to Mrs. Franz on June 16 to prevent probable foreclosure is quoted. Then Daniel is asked to state "the circumstances under which Mr. Campbell paid over to the Eckington Improvement Company that $500.

> "Mr. Campbell had, as he thought, the plans of the Washington Sanitary Dwellings Co. in shape to get a deed. A certificate of title had been furnished by the Columbia Title Co. and a meeting had been called, so Mr. Campbell informed me, of the Sanitary Dwellings Co. to formally take over the deed that I had the Northwest Eckington Co. execute at his request, and I told him that, in order to give some evidence that he would go to work and carry to completion the plans that Redman and myself would require that he put up a deposit of $500 as an evidence of good faith, and to help carry the property while they were working on the sale of the stock; otherwise it would take probably 60 or 90 days for them simply to experiment, in the meantime we would have to carry the interest charges on the trust."

This whole statement, in its studied wealth of detail, is proved to be entirely unfounded and a fabrication to suit the exigencies of the position he had taken—that Campbell had not paid the $500 to Mrs. Franz—by the fact that no $500 was paid for the option, although such a sum was receipted for in the option, no check for such a sum or any other sum appearing in the case as of that date (Rec., p. 186); that the date when the option was prepared, April 7, 1902 (see p. 270), does not correspond with the date of the Franz payment *by two months and nine days*, the Franz payment being in evidence as not having been paid until June 16, 1902. (See agreement, p. 192.) Mr. Hoover in his testimony credits the $500 on the Franz indebtedness under the date of June 16 (Rec., p. 91, top), to which date the calculation had been made. The check was dated June 17, and will be found at page 186, fifth item.

The statement should also be noticed in the above that the title had already, April 7, 1902, been furnished by the Columbia Title Company. Yet in his letter to Mr. Jones, president of the Trust Company, on June 16, 1902, he offered as an excuse for delay "as explained to you this property has been sold, but there is delay in the certificate of title."

A dozen more such cases can be cited from the record, with proof that cannot be refuted on any reasonable hypothesis, of Daniel's calculated disregard of the truth, but the above are deemed enough. It is upon a case attempted to be supported by such a witness that Campbell is sought to be deprived of property rights derived through a solemnly declared and sealed instrument.

The Auditor's Finding.

One of the striking questions in this case is to discover how the auditor's finding in favor of Campbell for $5,841.75 (Rec., p. 347) disappeared and was transformed into a deficit of $1,237.65 (Rec., p. 366), a change of $7,079.30. Up to the time when the case came from the auditor four justices and the auditor had passed on the facts. Of these, two justices and the auditor found for the defendant. By none of them was the auditor's finding of facts disturbed. Two justices, constituting a majority of the Court of Appeals, found for the complainant when the first and interlocutory decree was passed on a theory that the defendant below does not believe can be harmonized with the facts and based on an erroneous idea as to the 40-house paper. The case then came back to the lower court and that court practically followed the Court of Appeals in the latter's view of the case.

A close study of this last opinion of the lower court has never disclosed to counsel for the defendant below upon what theory the decree was signed. These anomalies appear and must be reconciled:

The auditor divided his findings as to Campbell's *credits* into three schedules, A, C, and D, as follows:

Schedule A.	House construction expense.....	$3,163.98
	C. Payments by defendant for complainants	2,195.96
	D. Expenditure by defendant Sanitary Dwellings Co.	481.81
		$5,841.75

None of these findings of the auditor were overruled except that under Schedule D for $481.81, and this ruling accepts the facts found. In making this finding the auditor proceeds to state specifically why this item of $481.81 was allowed under the March contract (Rec., p. 345):

> "On the 16th of June, 1902, the defendant paid through T. C. Daniel $500 to Mrs. Franz on account of the original trust indebtedness. Objection is made to this item which is based upon a theory advanced by the complainants in respect to the agreement of March, 1902, the complainants asserting its true meaning to be a contract of sale or purchase, whereby it became the exclusive venture of the defendant, he assuming all risks and cost, and undertaking to deposit $500 to be forfeited in case of failure.
>
> "This theory is contradicted, first, by the general character of the agreement. It lacks two essential requisities of a contract of sale and purchase. No price or terms of payment appear in the document. It was therefore not binding on either party. The complainants have, however, furnished a better interpretation in the agreement of Oct. 23, 1902.
>
> "First, in its preamble, which recites the making of the contract of March 13 between the complainants and Campbell 'stipulating for the services of said Campbell.'
>
> "Second, by agreeing to preserve to Campbell any rights he might have under the March agreement.
>
> "Then the October contract recites that 'in consideration of the services Campbell has already performed and for the purpose of securing his further services and co-operation in the handling and improvement of said property it is agreed to make certain *extensions* of the provisions of the said contract.'
>
> "The sixth section of the later contract provides that 'account to be taken of all monies and interest, he (Campbell) has already advanced under contracts in relation to said property already entered into between the parties hereto.'
>
> "Evidently the March agreement provided for a joint venture in which the parties assumed the common risk, and I find such to be the true meaning of the parties."

The sustaining of the auditor's report with the exception of this one item, $481.81, leaves the enterprise still owing Campbell $5,359.94. So much for the opinion. But in the decree certain *new matter* is introduced without any explanation of it in the opinion. We quote it (Rec., p. 396):

> "That the ten houses * * * are the property of said T. Cushing Daniel, Samuel C. Redman and Charles M. Campbell as tenants in common, in equal shares or proportions, the interest or share of said Charles M. Campbell therein, however, being subject to a charge in favor of said T. Cushing Daniel and Samuel C. Redman of $1,237.65, being the balance due by him on his one-third of the excess cost of building said houses and obtaining a release of said ten lots from a mortgage or deed of trust thereon known in these proceedings as the 'Franz mortgage or deed of trust' over and above the money obtained for these purposes by loans secured by certain deeds of trust placed upon said ten lots by said T. Cushing Daniel, Samuel C. Redman and Charles M. Campbell, which sum of $1,237.65 the said Charles M. Campbell is hereby decreed to pay forthwith to the said T. Cushing Daniel and Samuel C. Redman or their attorneys of record, and for the same the said T. Cushing Daniel and Samuel C. Redman shall have execution as at law."

There is nothing in the whole record to warrant such a decree except the loose charges of Daniel that the houses cost $44,000 set forth in paragraph 6 of the bill and attempted to be proved before the auditor. The auditor's comment was brief and to the point:

> "The complainant has filed here eight papers marked Exhibits 1 to 6, inclusive, 3A and 6A, containing statements most of which are immaterial to the account and some not in accordance with the facts" (Rec., p. 343).

Now, on the point of Daniel's claim of an alleged increase in the cost of the houses over the estimates the auditor says:

> "In the testimony the parties differ as to the alleged original estimate, the complainants stating it as $31,300 for ten houses, while the defendant, denying that any binding estimate cost was made, fixes the amount which was considered, at $33,000, and this is corroborated by the averment in the bill of complaint in the sixth paragraph.
>
> "The result of the accounting shows a moderate increase of cost over $33,000, and the defendant in his testimony (p. 79, printed record) describes conditions which created the additional cost, one being the location of the second row of houses, the ground being low and requiring cellars under the dwellings. It also appears that some of the original contractors failed to complete the work for which they were employed, necessitating the employment of others and increasing the cost."

The only explanation that seems possible for this apparent error in the decree which passed upon the auditor's report is that the court's attention lapsed when the decree was prepared for signature. Regardless of the unsettled character of this litigation, and the large credit remaining in Campbell's favor, Daniel and Redman compelled the settlement of this judgment by the defendant.

Final Decree of the Appellate Court.

As showing the uncertain hold the Court of Appeals had upon the facts of this complicated case, reference is particularly made to the final paragraph in the opinion, commencing at the top of page 373. The errors here in the statement of the facts go to the heart of the controversy. The court say, (italics ours):

> "*At the time the October contract was entered into* the imminence of the railroad improvements had very favorably affected the complainants' land and, as found in our prior opinion 'the apprehension of its loss by foreclosure was greatly if not entirely relieved.' It is apparent, therefore, that the only

> reasons for the very favorable terms upon which the defendant was connected with the enterprise was to secure his skill as a builder and his financial assistance in improving the property to the end that it might be speedily marketed. An examination of the contract and the testimony in the case *leaves no room for doubt on this question.*"

Now if there is anything in this case that is plain, uncontroverted, and incapable of being controverted, it is that at the time when the contract was entered into the result Daniel and Redman were bending every energy to accomplish was the *salvation* of the property, not the sale of it. The fact of the pressing and imminent character of the danger of foreclosure has been fully set forth elsewhere. Nor is anything more certain than that this financial strain was not relieved by the railroad developments until the better part of a year afterwards. Mr. Samuel Ross, who bought between 70,000 and 80,000 feet adjoining on the south, could not tell as late as March 30th, 1903 (Rec., p. 102), and put a reserve clause in his option that he was to be released if he could not secure railroad facilities.

The learned justice then proceeds:

> "The income from the ten houses constructed was not sufficient to liquidate the fixed charges upon the balance of the property. This tends to sustain complainants' contention that the erection of many more was originally contemplated.

On page 44 the revenue from the houses is set forth by Daniel. By referring to page 282 it will be seen these figures are corrected. We use the corrected figures:

> "Mr. Daniel, isn't it a fact that the revenue from these houses has already (1904) reduced the first building loan that was obtained by some $1,900?
> "A. Yes, sir, as I remember it, over $1,900.
> "Q. Has the revenue of these houses paid all fixed charges on them such as taxes, interest on the loan and so on?
> "A. Yes, sir."

As to the building of more houses the number of houses required by the contract was limited to five. All additional building was optional and had to be approved by all three of the parties. There is nothing in the case that alters this contract in the slightest particular. This has all been fully discussed elsewhere in this brief. The fact also is entirely lost sight of by the learned justice that the judgment of all three of the parties was against further building of more houses, owing to its development as railroad property. (See Daniel's letter, p. 173, and others of the same character on pp. 174 and 175.) And he further loses sight of the fact that both Daniel and Redman were without means. On page 111 this occurs:

> "Mr. Campbell why was it that more than ten houses were not built?
>
> "A. They were not built for the reason that I found that Messrs. Daniel and Redman were without funds and without bank credit, and for the further reason that the ten houses were sufficient to carry the fixed charges of the property, and for the still further reason that the property had developed as railroad property, and that *all of us considered* it would be folly to build more houses."

The learned justice then takes up the distribution of the money derived from the sale of the land to Malnati to the extent of $15,200 and comments adversely on the demand of Campbell that he be paid one-third of what was not required by the deed of trust, as follows (Rec., p. 374):

> "One-third of the remainder, or $1,686.54 was paid to Campbell under protest and the remaining two-thirds was received by the Improvement Co. and expended by it in the liquidation of its obligations."

It would be difficult to give a more erroneous conception of Campbell's position in the matter of the distribution of this fund. Over and over again in the record the fact is brought out that Campbell was paying all the bills and Daniel and

Redman nothing. (See p. 307, fourth paragraph from bottom; p. 279, top.)

This fact is also conclusively shown in the auditor's report, where neither Daniel or Redman stand credited with a cent except the $200 of Malnati money. Campbell is credited with $5,841. He naturally grew tired of this sort of thing, especially when he offered to pay *half* of all outstanding obligations if Daniel and Redman paid the other half. This proposition was sent to their lawyer in a letter which was placed in evidence on page 308. They declined. Each offered to pay one-sixth. (Rec., p. 308).

So, when it came to the Malanti distribution, Campbell naturally objected to using his share of these funds to pay the debts of Daniel and Redman, but offered if Daniel and Redman would pay up that then all of the funds derived from the Malnati sale could be used for the purposes of the property that would be needed. See letter to Redman, Jan. 6, 1904, p. 179, and letter to Ralston and Siddons, of August 14, 1904 (p. 257) in which Campbell says among other things in regard to Daniel's demand that Campbell return the share of Malnati money given Campbell—

> "I wish to say that the proposition about returning money, &c., is declined. *I am ready to take care of my share of any paper that is out, either by paying or renewing, and am ready to pay my share of any money due not covered by notes.*"

Which shows that the responsibility for these notes being out and the small curtails that were made, was chargeable to the necessities of Daniel and Redman.

The references of the learned justice to the fact that Daniel and Redman used their share to pay the indebtedness against the property therefore shows an entire misconception of the testimony for the reason that there would not have been any debts had they paid their share as they had promised when they induced Campbell to get under the load and save the property from immediate foreclosure. In other

words, they were using their share of the Malnati money to pay their own debts and then making a virtue of it, in the meantime accusing Campbell of using his share of the Malanti money for his own purposes instead of joining them in their honorable effort to pay off the debts against the enterprise.

In commenting upon the last opinion of the Court of Appeals attention is called to the statement by the court (Rec., 372-373) that by failing to except to the auditor's first report the appellant waived the right to except to it as restated, the learned justice thus overlooking the absolutely incontrovertible fact that the first report was in every particular in favor of appellant, who had no ground for and could not except to it. Not until the restatement erroneously and injuriously applied the law to the admitted facts was appellant entitled to except.

Although the record herein is extremely voluminous, affording a striking illustration of the wisdom of the recent amendments to the rules of this court, the questions involved are not numerous, and are sharply defined.

This is specially so because the facts found by the auditor and the accounts originally stated by him, so far as based on facts, *have been accepted by all the courts below,* the only change made being in the application of different principles of law to accepted facts and calculations.

We now proceed to discuss the contention heretofore referred to in the order above stated:

I.

The bill is filed by a corporation seeking cancellation of a certain deed absolute on its face.

The individual complainants are stockholders seeking an accounting, to which, if entitled at all, they are entitled as individuals and not as stockholders.

The consequences of misjoinder of plaintiffs are far more serious than those resulting from misjoinder of defendants,

yet this court has held that even the misjoinder of defendants is fatal.

Hale *vs.* Allinson, 188 U. S., 56.

Whether misjoinder exists always depends upon the construction given by the court to the pleadings.

In this cause it is submitted that upon these pleadings misjoinder clearly appears, and that the bill ought to be dismissed on that ground.

So far as the corporation is seeking relief, it must act alone; its stockholders have no standing as such to assert its rights. They are but certain of the units composing the corporate entity, and can only act for it when it refuses to act after proper effort, and then the stockholders must sue on their own behalf and on behalf of all other stockholders, and the corporation must be a defendant. There must also be appropriate effort to secure action and refusal to act.

Hawes *vs.* Oakland, 104 U. S., 450.

Supreme Court rule 94.

But this is not all.

The several complainants seek different forms of relief in which they have no concern. For example, the corporation wants a reconveyance to it in which the individuals have no interest, and the individuals want an accounting in which the corporation has no interest.

II.

The proof in this record falls far short of that clear and convincing character which this court has always so wisely insisted upon.

United States *vs.* Throckmorton, 98 U. S., 61

Before discussing this evidence it should be observed that the bill in this cause requires an answer under oath, which

was filed, and this answer denies all the material averments of the bill.

It can therefore be overcome only by the testimony of two witnesses, or one witness with strong corroborating circumstances.

Hopp *vs.* Vigel, 104 U. S., 441.

The answer is responsive, and is evidence in favor of defendant, which can only be overcome by the relevant testimony of two witnesses or by strong corroborating circumstances.

Greenleaf on Evidence, 15th edition, sec. 260.
Nailor *vs.* Conley, 118 U. S., 127 (see 134).
Vigel *vs.* Hopp, 104 U. S., 441.
Latta *vs.* Kilbourn, 150 U. S., 524.
Morrison *vs.* Shuster, 1 Mackey, 190.

At section 260 Mr. Greenleaf says:

> "The plaintiff, by calling on the defendant to answer an allegation which he makes, thereby admits the answer to be evidence. In such case, if the defendant in express terms negatives the allegation in the bill, and the bill is supported by the evidence of only a single witness, affirming what has been so denied, the court will neither make a decree nor send the case to be tried at law, but will simply dismiss the bill."
>
> Dulany *vs.* Rogers, 59 Md., 533.

The question of the character of the proof required to justify cancellation or reformation is well settled, and all the authorities hold that cancellation and reformation invoke the exercise of the highest powers of the court, which cannot be called into action except upon the clearest and most convincing proof.

An earnest effort has been made by counsel for appellant to so digest and comment upon the evidence as to enable the court to see at a glance the material portions of the testimony

on this question of the character of the deed as well as on the other questions involved.

From an examination of this evidence it will appear that the contention that the deed was merely intended as a form of security is only supported by the testimony of the appellee Daniel, whose testimony, as shown by the record, as collated in the statement and comment on the evidence, is absolutely unworthy of credence.

Against this is the testimony of appellant, which is corroborated by the most convincing circumstances.

Now as to the circumstances which demonstrate that the instrument was intended to be absolute. These appear on those pages of the brief wherein the testimony is digested and commented upon.

The enterprise which, because he was the head and front thereof, may be termed the "Daniel enterprise" was in sore financial distress.

Foreclosure was imminent; the future of the property was in a state of great uncertainty, depending upon future congressional action.

At the date of the agreement of October 23, 1902, which led to the execution of the deed, no one believed the property would sell under foreclosure for enough to pay the debts. So well known was this, that though the mortgagee, Mrs. Franz, had a deed from the improvement company, she was unwilling to record it, because she did not wish to be burdened with the property.

The complainants, on their own showing, are not entitled to a cancellation or reconveyance, because there was a complete meeting of the minds of the parties at the time of the agreement, and the remedy for the alleged breach of contract is by action at law for damages.

The agreement, Exhibit No. 1 of the bill, expressly provides that defendant, in consideration *"of his undertakings,"* shall possess one-third interest in the land, and the deed

executed to him by the corporation simply carries into effect this provision (see Record, page 17).

In seeking cancellation the doctrine, so peculiar to equity jurisprudence, that "he who would have equity must do equity," is wholly lost sight of in this bill.

Here is a case where the defendant has expended several thousand dollars of his own money; given and endorsed joint and several notes, and assumed individual liability for $32,000 to one not a party to the suit, for the consideration of *"possessing one-third of the land,"* and the complainants now ask the court to take from him all the consideration for which he subjected himself to these large liabilities, without even offering to restore the *status quo,* but evidently desiring to strip him of what they gave him to induce him to assume liability and leave him unprotected against the liabilities they persuaded him to incur by their promise that by so undertaking he should become *possessed of one-third interest in the land.*

The mere statement of this phase of the bill shows that for this reason alone it ought to be dismissed.

In determining the character of the deed it is pertinent to consider how much Daniel valued and relied upon Campbell's aid, as appears from his letter to Jones of July 24, 1902 (Record, page 231), wherein he dwells upon the value of Campbell's endorsement, and in the letter, which is apparently intended for the eye of Mr. Jones alone, makes a pitiful appeal on personal grounds for sympathy and indulgence.

In the light of these letters, it is an insult to the intelligence of the court to ask it to believe that when, on October 23, 1902, or about that time, Campbell came to the aid of the enterprise, it was in excellent financial condition and needed no assistance.

On the contrary, it is beyond question that the language attributed by Campbell to Daniel, when he said in substance that it would be much better to save two-thirds than to lose

the whole property, exactly expressed Daniel's real mental attitude.

There is another phase of this cause:

It is obviously a repetition of the old, old story. Daniel, like the captain of an imperiled ship, is seeking rescue, willing to pay any salvage demanded. The tow to port begins. Suddenly the storm ceases, and the once suppliant captain becomes haughtily defiant and insists that the salvor shall cast off the hawsers and forfeit all claim for salvage.

Here the property was worth about 15 cents a foot before the railroad legislation was undertaken; the enormous and unforeseen expenditures of the railroad increased it to 40 cents per foot, and instantly Daniel seeks to escape liability and to exclude Campbell from the benefit of the advance. The complainants do not come into court with clean hands. Courts of equity do not tolerate such conduct.

Twin Lick Oil Co. *vs.* Marbury, 91 U. S., 587.

On July 24, 1902, Daniel was called upon to state as strong a case as he possibly could, in order to avert divestiture of title, either by actual foreclosure or by final delivery and record of the deed which had been given to Mrs. Franz to allay her dissatisfaction at the situation. So he wrote the secret letter to Jones, and the letter for Mrs. Franz to see (Jones letter, 231; enclosure printed out of its order, 230).

Let us read and analyze these letters in connection with Mrs. Franz's letter (Record, page 232).

Of course, the secret letter to Mr. Jones ought to be expected to be a franker disclosure of the real situation than the letter which was to be exhibited, and so it is.

A man who, as this record shows, wields an extremely facile pen, in his confidential and pathetic letter for private consumption does not allude to the railroad situation, nor to the value of the property above the incumbrances. On the contrary, he dwells on the fact of a possible sale, and, above all, on the possibility of obtaining Campbell's personal re-

sponsibility *as adding to the security;* so that, to quote his exact language, "The additional endorsements of Mr. Charles M. Campbell, whom you know, and Mr. Redman would make this trust absolutely good."

We find in this letter no hint or suggestion of railroad developments or intrinsic sufficiency of security.

The tone of the letter is that of a frightened suppliant, not that of a borrower independent because he knows the value of the security to be such that if Mrs. Franz does not care to continue the investment he can easily place the loan elsewhere, as, indeed, he could easily have done had the value been anything like $100,000, as argued.

If, however, any letter called for a strong statement of value, the letter which was intended for Mrs. Franz imperatively did so.

Now, considering the ability of Daniel as a letter writer, and his imminent peril financially, can it be for a moment conceived that Daniel would have failed to not only allude to the full intrinsic value of the security, but to dwell vigorously upon it?

Does he do so? Not by a single syllable, and for the obvious reason that he knew, and also knew that Mrs. Franz and her intelligent and capable advisers knew, that there was no substantial equity in the property (see Mrs. Franz's testimony, 321).

What does he say on the subject of the intrinsic sufficiency of value and how that value is to be enhanced?

> "The balance of the loan of the $28,760 to be extended at 5 per cent with the individual endorsements of T. Cushing Daniel, C. M. Campbell, and S. C. Redman."

But this is not all. We know how true it is that "actions speak louder than words." What did Daniel do when, as he insists, he knew that the property was worth $100,000 to $150,000?

He invites and asserts in writing his reliance upon and

desire for Campbell's assistance, and enters into the contract of October 23, 1902, after previously entering into the agreement of March 13, 1902.

The estimate of value placed on this property July 24, 1902, by the persons who of all others were most capable of judging and of forming an accurate judgment, to wit, Mrs. Franz, Mr. Thomas R. Jones, and, above all, Daniel, is fully corroborated by the testimony of Samuel Ross (Record, pp. 101 to 105), which places the value at about $35,000. See in this connection the testimony of James W. Campbell (Record, pp. 162 to 164); which shows Daniel's clear understanding of the situation and his willingness to give the absolute deed.

What do intelligent men do when they have an unquestionably good investment? They keep it themselves.

What do they do when they are in financial distress?

Precisely what Daniel did.

It thus appears that when Daniel entered into the October agreement he was so situated that he acted most wisely in making an agreement on which he could secure Campbell's effective aid and save two-thirds of the property, as to which, as Campbell testifies, Daniel himself said, pending negotiations, that it was better to save two-thirds than to lose all.

There was, therefore, ample consideration for the agreement for an absolute conveyance of one-third, in view of the actual condition as Daniel is conclusively shown to have known it to be.

But, still, this is not all.

It will doubtless be contended that the deed was obtained by a species of duress, because when the deed was demanded the situation was such that Daniel could not proceed without Campbell's aid, and so they yielded, in Daniel's language, "to tie him" to the enterprise. If he was *not necessary to the enterprise*, why did they wish to "tie him to it"? Why did Daniel yield to Campbell's requirement? Obviously, because he knew Campbell was entitled to it, and because *he needed his aid.*

In conclusion, on this point, it is submitted that upon this record it appears:

A. That all the parties intended an absolute interest to the extent of one-third to vest in Campbell immediately.

B. That this was, when made, a wise and beneficial arrangement for Daniel, and an exceedingly risky one for Campbell.

C. That Campbell saved the situation, averted foreclosure, and made it possible for the enterprise to reap the benefit of the greatly enhanced value resulting from the development of the railroad situation.

D. That Campbell has never refused to account before a proper tribunal, nor to proceed, but has only required that accounting should be effective, and that Daniel and Redman should do their part.

E. That neither of them has done so.

F. That Daniel is utterly unworthy of belief.

G. That he feared an accounting and did not want it.

Indeed, upon the pleadings themselves the relief sought by the bill ought not to be granted, for that bill claims unequivocally cancellation and reconveyance, not a declaration of security, and the bill does not tender either ability or willingness to do equity by relieving Campbell of the liability for at least $57,000 assumed by him or by reimbursing him for his expenditures or compensating him for his services.

Upon a fair consideration of the several agreements in this case, it is apparent that Campbell has done everything, and more than he undertook to do, for—

a. He tried the sanitary dwellings plan, and only abandoned it because everyone interested agreed that it was not feasible.

b. He built the ten houses within a few dollars of his estimate, the slightest increase being caused by the addition of cellars.

c. He paid out of his own funds up to December 31, 1903, over $4,000 more than he had received.

d. He was always ready to go forward with the obviously preferable and wiser warehouse plan.

The Auditor's Report.

The comments hereinafter made on the auditor's reports, and the exceptions thereto, will fully corroborate these contentions and incidentally will take all the point off the much-repeated condemnation of Campbell's preliminary list of checks; for after undergoing the vigilant and unrelenting criticism and opposition of Daniel's able counsel, and no severer test could be devised, the ablest auditor the court below ever had finds a greater balance in Campbell's favor than he claimed in that report. In the light of this undisputed record, why should the time of the court be wasted by unprofitable discussion of the alleged lack of need of Campbell's aid, which cannot possibly be true.

If they are not true, as they are not, then Daniel gave the deed because he was perfectly willing to give it for reasons already fully stated.

The criticisms of the preliminary report are in the same general category, for the auditor's report fully vindicates its substantial accuracy.

After the most careful hearing by the auditor, in which he read every line of this voluminous record, and under the most bitter opposition by Daniel's counsel, the auditor

reached certain conclusions not in any wise affected by the action of Mr. Justice Wright on the exceptions, which findings completely vindicate Campbell.

The auditor finds the aggregate expenditures for all items made by Campbell to have exceeded his receipts from all sources by the sum of $5,840.95.

That the cost of construction was $34,544.50.

That up to December 31, 1903, his expenditures exceeded his receipts by the sum of $4,543.52.

All Campbell's claims for items of disbursement were sustained, as were all his claims for credits.

Appellees excepted, filing twenty-nine exceptions, again showing with what vigor every step was resisted and contested.

Of these, fifteen were abandoned at the hearing before Justice Wright, were overruled by him, and need no further consideration.

The first exception really raises no disputed question, although adroitly so framed to appear to do so.

It has already been shown that the Sanitary Dwellings Company was an attempted method participated in by Daniel to sell the property, and that reimbursement to him is expressly provided for by the agreement.

The second raises the question of the character of the $500 payment of June 16, 1902, by Campbell. This is fully established by the agreement of June 19, 1902.

The third simply in terms raises the question of date, the actual date being June 19, 1902.

The fourth relates to a tax payment of $122.91, ultimately allowed.

The fifth is an attempt to break the force of the undoubted fact on this record that Daniel did receive the $500 Malnati deposit, and that it nowhere appears that he ever accounted for it.

The sixth, seventh, and eighth simply raise an unimportant question of form which does not touch nor affect the balance.

The eleventh is a mere repetition of the second.

The twenty-fourth raises the question as to the literal accuracy of the amount stated by the auditor to have been overpaid by Campbell, and really raises no question.

The items reserved are fully shown on the new schedule and are those hereinafter stated.

The propriety of their inclusion in both Schedules A and F of both accounts has already been discussed and will be further alluded to.

After all the criticism which an able and learned lawyer can invoke, the findings of the auditor are not substantially affected by Justice Wright's ruling, and, as they stand, they fully sustain Campbell's contentions. As every finding of this report was in appellant's favor, it is quite obvious he could not except to it.

The Second Report of the Auditor.

By his second report the auditor, omitting the reserved items, finds an overpayment on the whole account of $4,727.83 and on the account to December 31, 1903, of $2,104.60.

To these overpayments there should be added under the defendant's exceptions to the second report the following:

Sanitary Dwellings Company expenses	$481.01
Payment June 16, 1902	500.00
Taxes paid	122.91
Repayment of Daniel note	600.00
Repayment to Cowell	450.00

The auditor gives credit for the Daniel and Redman notes and the Cowell payment in the general account as restated.

The Daniel note and the Cowell payment were all made before December 31, 1903 (Rec., p. 215).

If these omitted items are added, as will hereafter be clearly shown should be done, the result will be that the

overpayment on the whole account will be $5,833.55 and on the December 31, 1903, account $4,259.32. The difference between the last amount and that stated in defendant's exceptions is accounted for by the Redman note—$375—paid after December 31, 1903.

The reasons why all these items should be included in the computation of the amounts due as of the respective periods have already been fully given.

It is important to remember in this connection that Justice Wright's action on the plaintiffs' exceptions to the first report were purely tentative and provisional, as his direction to the auditor to prepare a separate schedule showing the reserved items clearly shows.

So that in this view of the case Campbell's action in demanding payment at the time of the Malnati sale of only $4,000 was fully justified, because he had then overpaid a much greater sum.

But even then, notwithstanding his great provocation, he acted most equitably, and consented to the use of the $4,000 in paying debts for material for the ten houses.

Assuming, however, the most unfavorable view of the auditor's restated accounts and of Justice Wright's action thereon, still no equity in favor of plaintiffs thereby arises, for no harm came to plaintiffs by reason of Campbell's action.

The view taken of the situation by Campbell, a layman, at this time is most natural and reasonable, especially when it is more than supported by the report of such an auditor as acted in this case, who found that Campbell might have properly claimed more than $500 more.

Campbell's action cannot therefore be considered either inequitable or arbitrary, and *a fortiori* cannot be said to be a ground for forfeiture of vested equitable rights.

It is, indeed, a new doctrine in an equity court that an alleged threat to apply for a receiver is ground for forfeiture of contract rights.

Campbell stood ready at all times to proceed with the development of the property, but all co-operation of Daniel and

Redman ceased as soon as the proceeds of the Malnati sale had been exhausted, with the expenditure of which their only co-operation had begun.

The Terminal Warehouse Company.

The foreclosure having been averted, and the railroad development having increased the value of the property for purely business purposes, all idea of building more dwellings was wisely abandoned and the plan shown in the prospectus of the Terminal Warehouse Company adopted. This exhibit was the joint production of Daniel and Campbell, and it most clearly shows that a plan had been agreed on by which to utilize all the remainder of the tract by introducing railroad switches and erecting warehouses. The plat forming part of the prospectus clearly shows how completely this plan had superseded the dwelling-house plan (Record, page 336).

When the Malnati sale took place Daniel proceeded to disclose traits of human nature as old as the race. Whereas he was abjectly glad of Campbell's aid when he was hopelessly striving to avert foreclosure, yet when by that aid he was saved and time had produced an enhancement of value, then Daniel comes into a court of chancery and gravely asks that court to aid him in biting the hand that has helped him by cancelling all agreements and the deed to Campbell, made pursuant thereto, *and this with no offer of repayment or release from liability to Mrs. Franz.*

So that, if this most inequitable proposition could be carried out, the net result would be that Daniel would get the benefit of an overpayment of $5,833.55 of Campbell's money, the benefit of his guaranty, the salvation of the property from foreclosure, and the opportunity to receive the enhanced value, and Campbell would get a liability for an indebtedness of $1,237.65, and one-third interest in the heavily encumbered ten houses, if Daniel's views, as expressed in his bill, were carried out. This cannot be in an equity court.

The mere statement of the proposition of plaintiffs is sufficient to dispose of it.

This case is by no means as complicated as it at first appears; it is simply the old struggle between honest observance of contract obligations by one party and the self-interest of the other.

The record depicts a very common situation—a desperate need for help, then fully recognized by all interested, and the despairing distress signal given by Daniel to Campbell, his then intimate friend and office associate. Daniel was about to abandon the enterprise, having, indeed, already abandoned it, for he had then actually given a deed to Mrs. Franz admittedly to save the expense of foreclosure.

Campbell responds, after hesitation, and only upon the reasonable requirement that he be not only protected, but compensated if the situation should be saved. The reason for this hesitation is very plain: The property was mortgaged for $3,200 per acre, while a better tract, nearer town, had been recently sold under foreclosure at $2,800 per acre (Record, page 72).

In principle, the arrangement was precisely similar to the giving of a bottomry bond, so familiar in admiralty practice.

A typical contention is made at this point by Daniel, and its character throws a flood of light upon his real character.

Prior, certainly, to June 16, 1902, there was confessedly a default both in principal and interest of the Franz debt.

Daniel gravely tells the court that there was no real default, because, although the Franz debt was carried, as it long had been, as an overdue claim, yet it had not been formally called in. Any human being who can read the testimony and correspondence in this record and say that this debt was not only called, but demanded peremptorily, is indeed, to say the least, optimistic. See Trust Officer, now President, Hoover's testimony of how often he had dunned Daniel (Record, page 98), and his statement to Mrs. Franz

that he had made persistent efforts in going after Daniel "by mail and telephone" (Record, page 226).

The demand had been yielded to and a deed was in respect to it actually given, but this state of affairs was carefully concealed from Campbell until after his help had been secured.

Another specious contention is that no interest was overdue at this time, and this most insincere contention is based on this, and this only, that about $7,000 of overdue interest had been compounded and converted into interest-bearing principal and made part of a new balance of principal, now amounting to $32,500, which was less than was then due, but which was, under an arrangement of compromise, accepted as the balance of a doubtfully secured debt, represented, as it was, by the elusive and evasive Daniel. Vice-President Hoover tells why, in a letter to Mrs. Franz, he recommends a reduction from $32,600 of principal with accrued interest to $32,500, which he regarded as a very good compromise, considering the amount of trouble which would come to her in case she were compelled to foreclose (Record, page 226).

Is this undisputed situation in anywise reconcilable with the untrue statement of Daniel that at this time the railroad situation had become settled and certain, and that the value of the property had then so increased that there was a substantial equity in it over and above the Franz trust?

Had this been so, would Daniel have entered into the Sanitary Dwellings Company agreement on a mere possibility of realizing something from the outcome of a foreign corporation, with the possibility of unlimited capitalization, with dividends and voting power suspended for three years?

Daniel, in his letter from Connecticut, August 19, 1902 (Record, page 170), in casting about for ways and means for carrying the property, at a significant date, which lies between the failure of the Sanitary Dwellings Company idea and the October contract, with foreclosure imminent, says

to Campbell: "I agree with you that you are not expected to spend more of your individual money." Would such language be used to a defaulting purchaser? But it would be used to a man who had so far furnished all the money, who had been promised a repayment of Daniel and Redman's shares in express terms, but who had not yet received a cent, and who had notified Daniel at New London, Conn., in a letter that is in evidence, that he would make no further advances (Record, page 107).

Under the practically uncontradicted record, as shown by the auditor's reports, Campbell has overpaid $5,733.55, which is not subject to any deduction for the $1,686.54 which he received as part owner out of the Malnati sale, because he was the owner of one-third interest therein.

Campbell's Performance.

But if all our other contentions are wrong, then, taking the most unfavorable view of everything which has occurred in this case, we say that Campbell has done all and more than all he agreed to do.

This case has always been argued on the other side as if the October agreement required Campbell, *unaided,* to finance the enterprise and develop it by building a large number of houses, he alone providing the funds and he taking care of the Franz trust. In the same breath with this claim of Campbell's sole responsibility and obligation plaintiff claim that for all they say he was bound to do he was to receive nothing, or, at the most, *but reimbursement.* Indeed, they try to make something out of the words "accounted for," and to claim that the term does not even mean reimbursement.

Under their construction is there a sane man who would have entered into the obligation imposed on Campbell by the October paper?

What conceivable inducement would there be to lead him to do it?

But the true construction of the contract is, and it is the only theory upon which any intelligent man would have considered it, that Campbell was to co-operate with and be co-operated with by the others, and that for what he was to do he was to receive at once *the absolute ownership of a one-third interest* in the whole property, this title being subject to Campbell's obligations by the contract, for any breach of which the plain and adequate remedy would be at law by action of covenant or in equity, if there at all, by specific performance and not by cancellation of his title.

In addition to the other evidence, so clear and convincing in the record, see the recital in the proposed Redman contract (Rec., p. 285, third line), which states in terms that Campbell is a *part owner,* and which contract Daniel helped to prepare (see Daniel's testimony, page 238, sixth line from top) before any controversy had arisen, but at a time when he knew just what Campbell had done and intended to do.

It follows that the central thought of the bill, cancellation, is in flat conflict with the equitable doctrine so imbedded in natural justice that "he who would have equity must do equity."

Besides, in equity a forfeiture is never enforced when compensation will afford an adequate remedy.

But Campbell did do all he agreed to and more:

1. He assumed individual liability on the Franz trust to the extent of more than $32,000, and obligated himself to build five houses (Rec., p. 47).

2. He built ten houses at a price of somewhat more than $34,000, a price fully justified by the report of the auditor.

3. He overpaid the amount received by him more than $5,000, and accounted to the plaintiffs more favorably than they were entitled to, as appears by the auditor's report, thus verifying Campbell's claim that the errors in his preliminary statement were all against him.

In this connection see Record, page 130, where it appears

that Campbell then had a minute report ready for examination by a real auditor under the test of cross-examination and with the right of exception, but which he naturally objected to submitting to be uselessly wrangled over before an examiner, where no conclusive result could be reached. When the proper time came Campbell did submit his detailed account to the real auditor, and it stands today finally sustained by such an auditor in all essential particulars, and this in spite of all the efforts to discredit it, which fall perfectly flat and pointless under the dispassionate findings of the auditor.

And the man who is now endeavoring to cloud the situation by complaining of Campbell's failure to account is the same man who did everything his astute counsel could suggest to prevent a prompt statement of the account, which, as far back as the date of the original decree, Campbell was ready and anxious to render.

Campbell is not, and never has been, in default as to further performance.

It is hornbook law that one under contract to do an act cannot be put in default unless he volunteers a refusal to perform, or refuses after demand, without a justifiable excuse. There is nothing of that kind in this record.

The utmost claim made by Campbell was for a tangible and effective form to be given to the protection so often promised him, both verbally and in writing, and this was not until after he had begun to find out how untrustworthy Daniel was.

That his action was wise has been demonstrated by Daniel's subsequent conduct as soon as his cupidity had been whetted by the Malnati sale.

Campbell was wise to demand what he thought, what his counsel thought, and what the auditor's report shows he was entitled to.

And as we have already said, if Campbell was not needed and not entitled to what he asked, why did Daniel yield?

If he did not realize his then great need of help, why should he wish to "tie" Campbell to the enterprise?

That there was a complete change of plan after the Malnati sale has already been shown by plaintiffs' Terminal Warehouse Company exhibit, on file with the testimony, and Daniel's letters to Campbell reporting progress. (See letter August 11, 1903, Rec., p. 173.)

Nowhere in the record is there a word of testimony by Daniel that he ever called upon Campbell to build warehouses or that he or Redman ever offered to co-operate in doing so. If there had been such a demand, or even a chance to assert it, we know Daniel would have been quick to have testified to it.

As a matter of fact, the best business policy was not to build warehouses, but to sell the land for others to improve in that way, for no one but the purchaser could tell what kind of building he would want.

Accordingly, the claim that there has been default on Campbell's part utterly fails.

The Weight of Evidence.

It is proper to deal briefly with the weight of evidence in this case, and in this aspect of it we submit Daniel utterly fails.

There are no real contradictions of Campbell except so far as Daniel attempts it.

No one corroborates Daniel except his paid employees, Burnley and Mitchell and Daniel's brother, and they only on the now entirely immaterial account question, since the account now, officially stated, so entirely sustains Campbell.

Redman's testimony is colorless and silent on Daniel's contention.

Campbell's version is corroborated by—

His sworn answer.

Every document in the case.

The inevitable inferences from the whole record.

The testimony of Samuel Ross on the small value of the land in 1902 (Rec., p. 101).

The testimony of James W. Campbell, who shows the full recognition by Daniel of Campbell's rights as an owner (Rec., p. 163).

The Several Decrees Below.

The first decree in the trial court dismissed the bill so far as it sought cancellation and allowed an accounting, the immediate statement of which Daniel opposed. This decree was right.

The interlocutory decree of the Court of Appeals reversed this decree and remanded the cause for further proceedings (Rec., p. 337).

For convenience, the opinion of the Court of Appeals, upon which its interlocutory decree was based, is printed as an appendix to this brief. It is reported in 28 Appeals D. C., page 493. An appeal from the decree on the mandate was dismissed on the ground that the decree was interlocutory.

It has already been shown how the Court of Appeals was misled by the mistaken and undue weight it gave an obsolete paper. In this respect the case is singularly like that of Darlington *vs.* Turner, 202 U. S., 195, in which this court reversed because utterly unjustifiable weight had been given to a fragment of a paper.

The final decree in the trial court has already been commented upon, and it has been demonstrated that it cannot be explained.

The final decree in the Court of Appeals has also been shown to have been based upon three erroneous premises:

a. That at the time of the October, 1902, sale the value

of the land had greatly *enhanced*, when, as a fact, its value was then at its *lowest ebb*.

b. That the object of Campbell's intervention was the *sale*, when, in fact, it was the *salvation* of the property from foreclosure.

c. That by not excepting to an auditor's first report, which was *wholly in his favor*, the appellant lost the right to except to the second report, which for the first time presented any adverse application of *legal* principles, for even the second report *finds no adverse facts*.

Counsel for appellant has endeavored, at the expense of perhaps some repetition, to emphasize the salient facts of this case, feeling confident that this court will accurately apply the law.

He ventures to suggest that the decree appealed from was erroneous, and that it should be reversed and the cause remanded with directions to reverse the last decree in the trial court and to remand the cause to that court with directions to dismiss the bill.

All of which is respectfully submitted.

JOHN RIDOUT,
Attorney for Appellant.

APPENDIX.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

Daniel testified in support of the allegations of the bill, and was positively contradicted by Campbell, as indicated in his answer.

The burden being upon complainants to show that the deed did not express the intention of the parties at the time, the court below considered the question of fact as evenly balanced upon the bill and answer; and, being of the opinion that there were not sufficient circumstances established by the evidence to corroborate the evidence of Daniel, refused the relief prayed as to the deed, in accordance with the general rule in such cases laid down in *Vigel* v. *Hopp*, 104 U. S. 441, 26 L. ed. 765.

From that point of view the conclusion of the learned justice is a correct one, but we are constrained to differ from his view of the weight of the circumstances surrounding the transaction.

At the time of the agreement of March 13, 1902, it is apparent that the complainants were apprehensive of the foreclosure of the mortgage on the land, concerning which they were in default; hence the liberal agreement with Campbell respecting the organization of a corporation for its purchase; Campbell, himself, entering into no binding obligation to accomplish the scheme.

Notwithstanding the failure of the scheme, the conditions of the property greatly improved during the year on account of the railroad development. The parties were agreed as to the reasonable prospect of building houses thereon and securing income therefrom. It was apparent that the cash value of the land had advanced considerably beyond the amount of the Franz mortgage, and apprehension of its loss by foreclosure was greatly, if not entirely, relieved. Complainants had no cash, and but little credit, for the improvement of the property, and believed that Campbell was not

only a skilful builder, but also one who could render financial assistance.

Campbell submitted his estimates of the probable cost of the erection of as many as forty houses, and the probable income therefrom as indicating successful development in that way. The parties then entered into the contract of October 23, 1902.

The legal effect of this contract was to make the complainants partners with Campbell in the development of the land by building houses; they furnishing the land and Campbell undertaking the erection of the houses. All were to join in using their credit in obtaining money to erect houses, and pay off the $32,000 encumbrance; and the sums advanced by the respective parties were to be accounted for. Five houses were to be erected at once, to be followed by others if results were approved. The last paragraph of the agreement was that "in return for said undertaking on said Campbell's part he is to become possessed of an undivided one-third interest in said property." Clearly this did not contemplate that Campbell should at once become the absolute owner of this one-third of the land. It was necessarily conditioned upon the terms of his undertaking, before recited in the contract. He had no immediate right to demand a conveyance thereunder, and none when the deed was actually executed and delivered to him on January 16, 1903. Complainants contended that this deed was made, at Campbell's request, to secure him in his rights under the contract. There is a conflict in the evidence relating to another matter in this connection. Complainants say that Campbell submitted to them in July, 1903, another contract, which he requested them to sign, and upon Daniel's refusal carried it away. When asked to produce this paper, on Daniel's examination as a witness, counsel for Campbell stated that [he] "being of the opinion that a paper not executed by the parties to this litigation is not competent evidence for any purpose, declines to produce it." Daniel then testified as to its contents, saying that it was a verbatim copy of the contract of October 23, 1902, with the exception that it contained certain other paragraphs reciting that Campbell, having complied with his agreement, is entitled to a one-third interest in the property. His reason for not signing the paper was that if signed it would relieve Campbell from all future responsibility in the whole transaction, and

give a title before his undertaking had been carried out. Campbell, when called thereafter as a witness on his own behalf, denied this statement, and produced an unsigned contract which he said that he had demanded the execution of December 10, 1902. He said that he then told Daniel that he had advanced too much money already without corresponding amounts having been advanced by him and Redman, and that he would decline to go ahead any further unless this contract or the deed itself was signed for his own one-third interest; in other words, that he demanded this or the deed; but one or the other must be executed. He then produced the alleged paper. This first recites the contract of October 23, 1902, and then adds two additional paragraphs as follows:

"9. The said corporation party hereto agrees to execute at once a conveyance of said undivided one-third interest to said Charles M. Campbell in fee simple.

"10. The said corporation party hereto agrees to indemnify the said Charles M. Campbell against all liability or loss of every nature, including counsel fees and expenses of litigation, which he may in any manner suffer, or incur for the benefit of said corporation under this agreement.

"The said T. Cushing Daniel and Samuel C. Redman hereby release the said Northwest Eckington Improvement Company and said Charles M. Campbell from all rights, interest, or claim which they claim or could claim under any former agreement."

Accepting Campbell's version of this transaction, and the paper as the true one, his statement is not calculated to impress us with the fairness of his purpose. This proposed contract went much farther than the deed which he demanded the execution of as an alternative. It not only contained a special indemnity clause for which there was no apparent reason, but also a clause releasing the Northwest Eckington Improvement Company and Campbell from all rights, interest, or claim which Daniel and Redman claim or could claim *under any former agreement.*

Under clause 9 he would have had the right to demand an immediate execution of the deed, and would thereby become invested with the absolute title to one-third of the land under the legal title of the improvement company, and the equitable titles of Daniel and Redman discharged, possibly, from the obligation of the former contract, notwithstanding its

re-recital, by the concluding paragraph before mentioned. If such a contract was in fact presented to Daniel and Redman, they were not only within their legal rights, but wise also, in refusing to sign it.

When the deed was executed, on January 16, 1903, it is not pretended that there was any new consideration for its execution. It was founded wholly upon the provisions of the contract of October 23, 1902, no matter what may have been the private opinion of the respective parties as to Campbell's rights thereunder; and its meaning, purpose, and effect are determined thereby.

The difficulty attending the correction of a deed or instrument carrying into effect a previous parol agreement is obviated when it appears to have been prepared and executed in pursuance of a written agreement. When it appears that the instrument intended to give effect to a written agreement is inconsistent with its terms there is a manifest equity to correct the error. Adams, Eq. 169; *Elliott* v. *Sackett*, 108 U. S. 132, 141, 27 L. ed. 678, 681, 2 Sup. Ct. Rep. 375.

As before stated, there is nothing which tends to show that Campbell was to become the absolute owner of one-third of the complainants' land without regard to the performance of the joint undertaking contemplated in the contract of October 23, 1902. It is true that contract is inartificial and somewhat vague, but no such meaning can be imputed to it.

In the light of the circumstances pointed out, we can come to no other conclusion than that complainants' statement of the purposes of this deed is the correct one. They represent it as given to secure Campbell in their performance of the contract. It was not a security, or an additional security, in the ordinary sense, but it did make Campbell secure, in the case of his endeavor to carry out that contract, by giving him at once the conveyance that he might thereafter become entitled to, and enabling him, by its registration, to give notice of his rights under the contract, to all persons who might thereafter acquire any interest from the complainants.

The decree, in so far as this conveyance is concerned, is interlocutory in its nature, and for the guidance of the auditor in stating the account between the parties, and, instead of virtually establishing it as an absolute deed, should have declared it to be merely a conditional one dependent upon the performance of the agreement in accordance with

which it was made. The question whether it shall be canceled is a final one that can only be properly determined upon the coming in of the auditor's report with the account that has been ordered to be taken by him.

There is a mass of disconnected testimony relating to the money advanced by the parties, to which, as well as to that relating to the sale to Malnati, we have given no consideration, because it all relates to the subject-matter of the reference to the auditor. For the same reason we have not undertaken to determine whether there has been an actual breach of the agreement of October 23, 1902, by either party, or what are the rights of the parties respectively in the matter of the distribution of the proceeds of the sale to Malnati. It is sufficient for present purposes to say that complainants had no right to sell any part of the land without Campbell's consent, or to appropriate the entire proceeds to their own use, if at that time the joint contract for improving the lands was in full force, and had not been violated by Campbell, or abandoned by him without justification.

All these matters can be inquired into, and settled in the final hearing with the auditor's report.

Our conclusion is that so much of the decree as has been appealed from must be reversed, with costs, and vacated, and the cause remanded, with direction to enter a decree declaring the true intent and purpose of the deed of January 16, 1903, as indicated in this opinion.

Reversed.

Mr. Justice McComas dissented.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 251.

CHARLES M. CAMPBELL, APPELLANT,

vs.

NORTHWEST ECKINGTON IMPROVEMENT COMPANY, T. CUSHING DANIEL, AND SAMUEL C. REDMAN, APPELLEES.

BRIEF FOR APPELLEES.

This case is here on appeal from a decree of the Court of Appeals of the District of Columbia, made on January 3, 1911 (Record, p. 375). The opinion of the court, by Mr. Justice Robb, appears (Record, pp. 369-374).

The facts of the case, briefly stated, are these:

The Northwest Eckington Improvement Company, a corporation created under the laws of the State of Virginia, and doing business in the District of Columbia—its principal business being the buying, improving, and selling real estate, its chief stockholders being T. Cushing Daniel and Samuel C. Redman—owned a tract of land of ten or more acres, situate in the District of Columbia, in a suburb known as

Eckington, and embracing lot No. 35 in the subdivision known as "Metropolis View."

On March 13, 1902, a contract was entered into between the said Northwest Eckington Improvement Company, T. Cushing Daniel and Samuel C. Redman, of the one part, and the said Charles M. Campbell of the other part (Record, p. 14), by which contract the said Campbell undertook and agreed to organize a company to purchase the land above referred to, and the other parties agreed that

> "In case his plans work out so that they accept the consideration said company offers for said ground, to give him (Campbell) a third of the amount they receive, whether of money, stock or property, and that in the event of such sale or disposition of said property, he is to become possessed of an undivided one-third interest in the property."

The plans did not work out, the company was a failure and the ground was not sold, and the whole scheme was abandoned. The parties then, on the 23d of October, 1902, entered into another contract (Record, pp. 16-17), under which the three persons, Daniel, Redman, and the Northwest Improvement Company, appellees here, "decided to improve and market said property," and they desired to "utilize the skill of said Campbell as a builder, and his assistance financially." It was accordingly agreed that the three parties named should "*employ* said Campbell as a skillful builder in the erection of said houses, he to take charge of the said work * * * and pursue such work industriously and with all the ability and skill he can bring to the work." Section 6 of the contract defines the financial assistance that Campbell was to render, and expressly provided that

> "In doing this, account is to be taken of all moneys and interest he (Campbell) has already advanced under contracts in relation to said property already entered into between the parties hereto. And any

sums advanced or to be advanced by any of the parties for the same purpose, under said agreements, is likewise to be accounted for."

Section 7 provides for the erection of five houses, and Campbell agrees therein, to "industriously push said improvements with his best skill and ability, as provided in paragraph 5 herein, without further compensation for his services than are provided for herein."

Out of the breach of this contract of the 22d of October, 1902, have arisen all the questions which have been considered and decided in the course of this cause. The opinions of the several courts are those of Mr. Justice Anderson (Record, pp. 325-332), Chief Justice Clabaugh (Record, p. 339), of Mr. Justice Barnard (Record, pp. 358-365), and the opinion of Mr. Justice Robb (Record, pp. 369, 375). An opinion of the Court of Appeals, delivered by Chief Justice Shepard, on December 4, 1906, has for some undisclosed reason been omitted from this transcript. This opinion of Chief Justice Shepard is referred to by Mr. Justice Robb in his opinion (Record, p. 370), and the mandate issued upon it appears on page 337 of the record and appears in 28 Appeals D. C., 483.

Claims Asserted by Campbell.

The land owned by the Northwest Eckington Company was subject to a lien debt held by one Mrs. Franz, amounting, principal and interest, on the 2d day of December, 1902, to $32,938.66. On said last-named date an agreement was entered into between Daniel, Campbell, and Redman, of the one part, and Mrs. Elinora T. Franz, of the other part (Record, pp. 46-48), whereby Mrs. Franz, in consideration of certain things to be done by the other parties, agreed to release from her lien a certain portion of said land, and the other parties agreed to erect on the portion so released five brick dwelling houses, within six months from the date of

the agreement. They further agreed to pay off the amount due to Mrs. Franz in the manner set out in said contract.

Pursuant to the terms of the contract of the 23d day of October, 1902, Campbell was employed "as a skillful builder in the erection of said houses," and into his hands was paid all the money that was to be applied in their erection, and, under the 6th paragraph of that contract, Campbell was "to use his credit by joining the other parties to this contract in the making and endorsing of any notes that may be required in negotiating the necessary loans for the making of said improvements, and in paying off the loan of $32,000 now due on said property."

The bill charges (Record, p. 4) that pursuant to the agreement with Mrs. Franz, of the 2d day of December, 1902, there was conveyed to Daniel, Redman, and Campbell, as tenants in common, the land upon which the five dwelling houses were to be erected, and that immediately thereafter they borrowed $12,500, part of which was applied to the existing deed of trust, and part to the erection of the five dwelling houses. This charge is admitted by the answer of Campbell (Record, p. 9).

The bill charges, in the same paragraph, that the building of these five houses had hardly commenced "when the defendant Campbell began to insist that his rights under the aforesaid contract of October 23, 1902, should be secured to him upon an undivided third interest in the property, etc., and the complainants finally yielding to the representations and solicitations of said defendant, and for his security only, agreed that the complainant Improvement Company should make the conveyance requested by Campbell," and thereupon they made and delivered to him the deed he asked for. Campbell in his answer (Record, p. 9) admits this, but he insists that the deed was not given as a security, but that "the said conveyance was made to carry absolute title to the defendant."

This is the first demand and insistence made by Mr. Campbell. Mr. Justice Anderson sustained the contention

of Campbell, but Chief Justice Shepard, in his opinion, 28 Appeals D. C., 483, and Mr. Justice Robb, in his opinion (Record, p. 360), reviewing the evidence, reversed the decree of Mr. Justice Anderson, and held: "That the said deed of January 16, 1903, was conditional, depending upon the performance of the agreement in accordance with which it was made, as indicated in the opinion of the Court of Appeals." The bill charges, paragraph 7 (Record. p. 5), that a sale was made of a portion of the land owned by the Improvement Company, on November 2, 1903, to one Malnati, for the price of $15,200; that out of this money, it was necessary to pay about $6,000 to the holder of the mortgage, upon the property and some taxes then due thereon; that at the time this sale was made the appellant Campbell demanded that there should be paid to him, first, one-third of the proceeds of this sale after deducting the amount paid on the mortgage, and the taxes, and second, that there should be paid to him, in addition, the sum of $4,000, which he claimed that he advanced out of his own pocket. He then presented to complainants what he called a statement, without any vouchers, purporting to show a balance due to him of $4,000. Campbell, in his answer (Record, p. 10), admits the facts as charged in the bill, but attempts to qualify them by a further statement, which the proof in the cause subsequently showed to be without foundation.

Campbell, as above shown, had received all the money that was intended to be applied to the erection of the dwelling houses, and had never kept any accounts, had never at any time rendered any accounts of his stewardship. The statement that he furnished, without vouchers, was later found by the auditor, to whom the cause was referred to to state and settle the accounts between the parties, found the said statement to be fictitious and incorrect.

When Campbell made his demand to have paid to him the two amounts out of the Malnati sale, and it was declined, he said to Mr. Daniel, "If I don't get it, I will throw the matter in the hands of a receiver." Later he said to Mr.

Redman, "that if something was not done at once, he would throw the whole thing in the hands of a receiver" (Record, pp. 29, 53).

The principal question presented in this cause is, has Campbell fulfilled the obligations of his contract of the 23d day of October, 1902? That is the only contract under which he can assert any claim of right. Has he performed the duties which he there bound himself to perform? He undertook, "as a skillful builder in the erection of houses," to build these houses—whether they were five, or ten, or forty, as is variously contended here. The proof is that he contributed neither skill nor labor in their erection, but turned the work over to a man named Wallace, who did it. He received large sums of money to be applied to the erection of these houses, but he kept no accounts of his receipts and expenditures, and furnished to his employers no account of these things, and, in one instance, at least, he appears to have charged to the account of his employers here an amount of $450, which he owed for work done on his private account, in the erection of other houses, and sought to compel the person to whom he owed this money to change his accounts so as to make it appear to have been money expended on account of these employers. (See Cowell's testimony, Record, pp. 212, 213.) He is shown to have made improper demands for money from these employers, and to have sought to enforce his demand by threats of a receivership. His course of conduct is fitly characterized by the Court of Appeals in its two opinions as highly improper. His demands have been scrutinized and sifted by the auditor and the courts, in the light of all the evidence in the record, and has resulted in the disallowance of these demands and the condemnation of his conduct.

I have read with attentive care the brief of the learned counsel, Mr. Ridout, on behalf of the appellant Campbell, but without finding there any view presented which warrants me in seeking to combat it in this brief. Many misapprehensions of the evidence appear, which are corrected

the review of the evidence made by the Court of Appeals in its two opinions. One error of counsel may be adverted to. On page 23 of his brief he refers at length to what he calls "the contract of June 19, 1902," from which he seeks to deduce certain conclusions. This alleged contract appears on pages 191-2 of the record. Now, as appears from the face of this paper and as was recognized throughout these proceedings, this paper was never executed by the Northwest Improvement Company, and hence never became operative for any purpose, except to show that it was proposed as a contract, but declined by that company, which refused to unite in it by the president of the company declining to affix his name as president to it.

Indeed, this brief impresses me as but little more than a means employed by the writer to vent an unstinted measure of vitriolic wrath upon Mr. Daniel, by the imputation of improper motives to him, for all his acts and charging him with falsehood and deceit in all his expressions. I cannot compete in this sort of debate, and am content to leave this case to be decided upon its merits, as these appear in the issues raised on the pleadings, and resolved by the proofs.

HOLMES CONRAD,
Attorney for Appellees.

The court will find appended an analysis of the testimony in this case by Mr. T. Cushing Daniel replying to Mr. Ridout's brief.

For a few specimens of the moral turpitude of counsel and client in this case we call the court's attention to the following:

See record, page 36, third paragraph, in regard to Campbell's accounting.

The uncontradicted testimony of Daniel.

Campbell when asked the cost of these houses stated in the presence of Mr. Siddons and myself—"That his counsel had told him not to say what the houses cost, and that Daniel and Redman wanted to know merely as a matter of curiosity; it was not any of their business anyhow" (Daniel).

Record, page 107, 4th paragraph from bottom:

"Mr. CAMPBELL: Mr. Daniel and Mr. Redman say they frequently demanded an accounting of you, what is the fact about that?

"A. They never demanded an accounting of me."

See Daniel's Testimony, Rec., page 28, lower half of page.

See John Mitchell's testimony, Rec., page 192, last part and middle of page 193.

See C. D. Burnley's testimony, Rec., page 199, first three paragraphs.

See S. C. Redman's testimony, Rec., page 50, middle of page.

See record, pages 26, bottom, and 27, top. After identifying the agreement Campbell presented to Daniel to sign and finding it would destroy their case, counsel for Campbell declines to produce it.

See Daniel's explanation of this paper, presented to him in July, 1903, on record pages 26 and 27.

Reply to Appellant's Brief.

Page 6, answer to paragraphs 1 and 2. As to value of property:

This ground is within the alphabet of the city of Washington, at W and Fourth streets and Rhode Island avenue running through it. The Catholic University site is about a mile further north.

Answer to paragraph 2:

T. C. Daniel, S. C. Redman *et al.* paid $12,500 in cash, and gave a deed of trust for the $37,500 in 1891, at the time of purchase.

Answer to last paragraph:

The record shows that $12,500 was paid in cash on this property at time of purchase and by reference to record, pages 289 and 290, that the sum of $37,538.09 was paid on principal and interest, which added to the trust at that time of $27,000, makes this property stand the appellees $77,-038.09. Refer to pages 234-5 of the record as to the true condition of the property. No such deed was given.

Page 7, answer to paragraph 1:

See record, page 240, explanation of overdue taxes.

Page 8, answer to paragraph 1, as to value of ground:

An unsupported assertion, no reference given.

Answer to paragraph 3, same subject:

See record, page 92, 4th paragraph from bottom—showing statement untrue.

Page 9, answer to paragraph 2:

This contract can be found on page 270 of the record. Shows 457,380 square feet of ground and at 35 cents per foot makes a total of $160,083.

Answer to paragraph 3:

Mrs. Franz admits on record page 321, bottom of page, she left everything to the company of which Mr. Jones was president. And at this time, June 16, 1902, these letters were written as an argument to have the interest reduced to 5 per cent and in the interest of Mr. Campbell's Sanitary Dwellings enterprise as well as the appellees. Am therefore at a loss to account for this nonsense. See record, pages 230-1; also page 252.

Page 10, answer to paragraph 1:

See record, pages 191-2; also pages 270-1, showing contract of April 7, 1902, as to this $500.

Answer to paragraph 3:

On record page 205, it is shown that three days before this letter was written a settlement had been made through Mr. Howard, the treasurer of the company. Also refer to Mr. Hoover's testimony on record page 208.

Answer to paragraph 4:

At this time, June, 1902, Campbell was trying to sell the stock of the Sanitary Dwellings Company, and this statement is absolutely false.

Page 11, answer to paragraph 2:

Refer to Howard testimony, record, page 205, Hoover testimony, record, page 208, "No interest due until December 16, 1902."

Page 12, answer to paragraph 1:

See page 109 of the record. This philosophy is put in Campbell's mouth by his attorney, and Daniel pronounces it a fabrication *in toto*.

Answer to paragraph 2:

No such foreclosure was ordered, and the record shows that no interest was due until December 12, 1902.

Answer to paragraph 3:

The meeting simply ratified the agreement of October 23, 1902, under which Campbell was to build houses to carry this property and pay off the trust.

Page 13, answer to paragraph 1:

See record, page 163. Judge Campbell had the Sanitary Dwelling Company in his mind, and adds, He (Daniel) did not seriously object to having the stockholders' meeting, etc. See Daniel testimony, pages 250-251 of the record.

Answer to paragraph 2:

Ridout now terms this deed in trust a security deed. Ridout, see page 92 of the record. Mr. Hoover also says it was a deed in trust.

Answer to paragraph 3:

The record shows Daniel, not Mrs. Franz or the trust company required Campbell to sign this so-called guarantee. Record, page 39, Daniel; page 93, Hoover. Record, page 92. Q. Mr. Hoover: At whose instance was this paper of December 2, 1902, prepared, Mr. Daniel's or the trust company's?

A. It was prepared, as I remember it, at the request of Mr. Daniel.

Page 14, answer to paragraph 1:

Already answered in this brief, page —.

The $500 payment of June 17, 1902, was the deposit on the Sanitary Dwellings contract and has already been explained by the record.

Answer to paragraph 2:

The record shows this absolutely false. Daniel and not the trust company required him to sign.

The Deed.

Page 17, answer:

This was no guarantee of Campbell. But a joint agreement which Daniel required Campbell to sign, record, page 46.

The amounts were $1,080.46 and $300 paid as heretofore shown after the loan of $12,500 was made to Daniel, Campbell, and Redman, record, page 286, and Campbell had received an order signed by Daniel and Redman that the F. H. Smith Company would pay the money over to him.

Page 18, answer to paragraph 1:

Record shows he did not superintend the construction of these houses but a man by the name of Wallace did. See appendix.

Answer to paragraph 2:

On January 19, 1903, Campbell had really done very little.

Answer to paragraph 3:

The deed to the first five lots was recorded December 6, 1902. First building loan of $12,500 made December 4, 1902.

Daniel's and Redman's Bad Faith.

Answer to paragraph 4:

See Daniel's testimony, record, page 23, bottom. At this time, in the summer of 1902, Campbell was under contract to take care of the property, record, page 270. Date of sale April 7, 1902, to Sanitary Dwellings Company.

Page 19, answer to paragraph 1:

These letters were written in August, 1902, when Campbell was still working on the Sanitary Dwellings Company enterprise.

Answer to paragraph 2:

As to the October 23, 1902, contract, executed November 27 or 28, 1902, see Daniel's testimony, record, page 23.

Answer to last line:

The whole record shows that, on this point, Campbell's statements were untrue.

Redman's Admissions.

Page 20, answer to paragraph 1:

Record, page 51, it is shown Ridout stopped Redman in his testimony 'his note. It simply shows that the bank did not want to discount Campbell's note even with Redman's endorsement.

Daniel's Amazing Record.

Answer to paragraph 2:

The letter on page 171, record, is a reply to one received by Daniel from Campbell containing the suggestion to borrow $5,000. This was August 19, 1902, at which time Mr. Campbell had Mr. Burnly employed in selling the stock of th Sanitary Dwellings Company.

Page 21, answer to paragraph 1:

This is untrue. Refer to record, page 237, bottom, and page 238; record, page 119, Campbell. Campbell knew of these railroad improvements in May, 1902. See record, page 119.

Page 22, answer to paragraph 1:

Did not apply to Redman's interest in the whole property. No option agreement on the Redman interest ever existed, Exhibit 5 on record page 285 is explained by Daniel on record page 238. This unsigned paper by any of the parties does not even mention a price. It was substituted by another paper drawn up by Redman's lawyer and nothing ever came of either of them.

Page 23, answer to top of page, commencing at bottom of page 22:

Campbell admits the railroad improvements were settled as early as May, 1902, record, pages 117-119.

Campbell states, record, page 312, that no difference existed until he presented his false account.

Answer to paragraph 1:

He tries to deny this as his account but he is convicted out of his own mouth, or rather from his own pen by letters that he had written relating to this account, found on record pages 178, 179, 181.

Page 24, answer to paragraph 1:

Auditor Payne's account and statement was repudiated by the court and a correct one required, which verified Daniel's contention and decided that Campbell owed Daniel and Redman $1,237.65 and gave an order for judgment for same.

Page 25, answer to paragraph 1:

Refer to record, page 56.

Page 26, answer:

This is not so, the case was deferred until this one was decided, and the $100 has never been paid.

Page 28, answer:

The record shows that Daniel was paid $248.00 and $1,600.00 in first trust notes.

Refer to record, pages 48 and 49.

Pages 29, 30, 31, answer:

Refer to Daniel's explanation, record, page 15, paragraph 6.

Page 31, answer to bottom of page:

Already answered. Refer to record, pages 270-1 as to this $500.00.

Page 32, answer to paragraph 1:

See record, page 91. Hoover credits to Daniel, June 16, 1902, $500.00.

Answer to paragraph 2:

See record, page 186. Campbell credits himself on his own statement, June 17, 1902, with $500.00.

The Auditor's Finding.

Page 33, answer to paragraph 2:

Willful misstatement and amount reduced to $3,041.29, by the last finding of the auditor under court's instructions. See statement taken from auditor's correct report.

Page 35, answer to paragraph 1:

The cost of the houses was fixed by the auditor's account, record, page 349.

Final Decree of the Appellate Court.

Page 37:

Campbell knew in May, 1902, of these railroad developments. See record, page 119. No foreclosure was imminent at this time. No interest was due on the trust between June 16 and December 16, 1902.

Here is a deliberate attempt to deceive the court.

The figures were mentioned by Daniel to show that the building of these houses was a satisfactory enterprise, if continued. Record, page 125, as to all fixed charges.

Campbell testified as follows on record page 125:

* * * * * * *

Q. Have your completed the answer you wished to give?
A. Yes.

Q. Now, I will ask you to answer my question. I want to know what you mean by the fixed charges upon this property.

A. The fixed charges were interest on the Franz trust, the taxes on the property and the interest on the building loans.

Q. How much has been received by either the Northwest Eckington Improvement Company or yourself from these ten houses?

A. I don't know, sir.

Q. Do you know how much you have received?

A. I haven't received anything.

Q. Do you know if the Northwest Eckington Improvement Company has received anything?

A. Not to my knowledge.

Q. As a matter of fact, under the terms of the loans that you obtained, the rents derived from these ten houses were to be applied to the payment, not only of the taxes accruing on those houses and the interest on those mortgages, but also towards the reduction of the principal?

A. Yes.

Q. And that was the agreement actually made?

A. Yes, sir.

Q. And under that agreement none of the rents or profit of those house have in fact been received either by you or by the Northwest Eckington Improvement Company, have they?

A. Not as yet.

Q. So that, thus far these ten houses have not carried any of the fixed charges represented by the Franz trust, or the taxes on any part of this property except the ten houses?

A. No, sir, and will not until a certain reduction is made on the building loans, $5,000.

The largest fixed charge interest on the Franz trust and taxes are left out.

Page 38:

As to the building of more houses, there is no such evidence in the record. The house building enterprise was satisfactory—Daniel and Redman favored same if Mr. Camp-

bell would have lived up to his contract. See record, page 246 and page 247.

As Campbell posed, and the appellees believed him to be a capitalist, it is interesting to read Thomas Record, pages 278-280, and Daniel Record, page 261.

Page 39, answer to paragraph 1:

The auditor's account was stated upon an entirely false basis and was sent back to be correctly stated.

Answer to paragraph 2:

Refer to record, page 29. Showing Campbell refused to use money from this sale, record, page 35, paragraphs 4 and 5.

Page 43, answer to paragraph 6:

The whole record shows this statement to be untrue. Answer to last line: "Shall possess" should be *"is to become possessed of."*

Page 44, answer to paragraph 2:

"Shall possess" should be *"is to become possessed of."*

Answer to last paragraph: Words put into Campbell's mouth by his attorney, and denied by Daniel, record, page —.

Page 45, answer to paragraph 3:

Untrue as shown by the record.

Answer to paragraph 6:

The record shows Mr. Jones had the whole matter in hand and those letters were in the interest of the Sanitary Dwellings Company and Campbell to continue the release feature in the deed of trust and have the interest reduced to 5 per cent, record, page 252, third paragraph from bottom.

Page 46, answer to paragraph 1:

Mr. Jones was perfectly familiar with all the railroad improvements and knew the great value of the property. Also knew when the railroad company by condemnation had paid 30 cents per foot for all lots taken by Rhode Island avenue through the land.

Answer to paragraph 6:

As the deed of trust notes are often sold or transferred to other parties individual endorsements give them banking value, independent of the land, and reduce their rate of interest.

Page 47, answer to paragraph 1:

Mr. Jones and Mrs. Franz never testified putting any price on this ground. Ross, record, page 103, states he paid 35 cents per foot for adjoining lots.

Page 48, answer to paragraph C:

Already answered on page 15 of this brief.

Answer to F:

It is only necessary for the court to read carefully Daniel's testimony to prove this statement absolutely false.

Page 49, answer to paragraph 3:

False as shown by auditor's report.

Page 50, answer to paragraph 12:

This is infamously false as the record shows that the money was paid out on the building obligations contracted by Campbell.

Page 52, answer to paragraph 3:

Campbell demanded $4,000 and one-third the net proceeds from sale to Malnati.

Answer to paragraph 6:

Record shows that he acted under advice from his counsel from start to finish.

"The Terminal Warehouse Company."

Page 53, answer to paragraph 1:

The contrary is shown by the record. The warehouse scheme abandoned, and it only applied to a small section of the land. So far as the sketch of a proposed map. * * * Refer to record, pages 238-9.

Page 54, answer to paragraphs 2, 3 and 4:

Record shows this to be a false statement.

Page 55, answer to top of page:

A false statement as the record will show and already answered.

Answer to paragraph 3:

The record shows that Campbell knew the railroad situation in May of 1902, when he wrote the prospectus of the Sanitary Dwellings Company, who were then buying the ground at 35 cents per foot.

Campbell's Performances.

Page 58, answer to paragraph 1:

Absolutely and entirely false as shown on the record. See pages 28, 192, 193, 199, 50, and 36, which show that accounts had been demanded from Campbell and he refused.

Page 60, answer to top of page, as to value of ground:

See page 103 of the record, Ross.

Q. How near is the other ground that you purchased, that is, the first purchase that you made?

A. That runs practically up to this tract in controversy here.

Q. What did you pay for them?

A. I think they averaged me about 35 cents.

The Several Decrees Below.

Page 60, answer to paragraph 4:

This accounting would have been upon the false theory of Campbell's being a one-third owner. The Court of Appeals reversed this false theory.

Answer to paragraph 7:

See page 15 of this brief.

Answering Appellant's Brief.

Pages 15, 16, and 17.

40 House Paper.

Refer to record page 18, middle:

Q. Mr. Daniel—in whose handwriting?
A. Mr. Campbell.
Q. Do you know when he brought you that?
A. That was about the time that the contract was signed up. November 23, 1902.
A. * * * That was a part of the contract, the plan, in other words, upon which Mr. Campbell was going to turn this into income property and pay off the existing trust on the land.

See Exhibits 4 and 5 in record, pages 18, 19, 21, and 22.

Answering first paragraph on page 15, brief of appellant:

An adroit attempt is here made to make it appear that the building of these forty houses applied to the Sanitary Dwellings agreement of March 13, 1902, when as a matter of fact, on record pages 18, 19, 21, and 22, it is plainly shown that it was part of the October 23, 1902, undertaking and given to Daniel at or about the time this contract was signed up—November 23, 1902. Nevertheless, in the face of this he deliberately attempts by his statement, in direct conflict with this evidence, to show that the sanitary dwelling-houses mentioned as the Sternberg houses, cost $2,800, when the original evidence in this case plainly shows that they cost $2,400 (Rec., 235-6); also prospectus filed in the original exhibits showing cost of the Sternberg Sanitary Dwelling houses (Rec., 236, Exhibit Rebuttal 2), whereas the houses under the October 23, 1902, contract as shown in Exhibit 5, Record, 21 and 22, cost $3,130 each. The difference between this and the cost shown on record page 19 of $2,800 is the item of interest of $300 being left out. This is absolutely conclusive.

In further confirmation as to the number of houses to be built under the October 23, 1902, contract refer to testimony of Mr. C. D. Burnley, Rec., 198, paragraph 10:

Q. Did you have any conversation in regard to the Northwest Eckington Improvement Company enterprise?

A. Yes, on one occasion we were discussing it and he said the Sanitary Dwellings Company, had fallen down, and that it was really a blessing in disguise as they were going to develop the property with a better class of houses, and make more money out of it than by selling the stock.

Record, page 201, 2d paragraph from bottom:

"Mr. Campbell on both occasions, when I went into his employment, he spoke of building up the whole piece of ground, and *also after* the S. D. Co. had fallen down and they had taken it up.

See record page 211, 2d paragraph from bottom—Sylvester C. Cowell:

Q. Did he—Mr. Campbell—tell you whether he was going to build five or ten or more houses out there?

A. He was to build five and then, as I understood him, he was to build five more, and then, as I understood him, still further, he was to build to the other end; and the way I understood him he was to build a good number of houses, that is the way I understood him.

See record page 31—Daniel—lower half of page.

The Deed.

Answering statements on page 17 of appellant's brief. by referring to record page 46, it will be seen that it is no guarantee of Campbell, but it is an agreement which Daniel required Campbell to sign. Record, page 39, 5th paragraph, Daniel.

See record, page 92, 1st paragraph:

Q. Mr Hoover, at whose instance was the paper of December 2, 1902, prepared? Mr. Daniel's or the trust company's?

A. It was prepared, as I remember it, at the request of Mr. Daniel.

Record page 93, at bottom. In reference to the negotiations of what has been called a guarantee by Mr. Ridout:

Q. Did Mr. Campbell take any part in those negotiations?
A. Not so far as our company was concerned.
Q. Did he ever call to see you respecting the matter?
A. Not that I recollect.

Also Hoover, record, page 210, 2d paragraph:

Answering statement of redeeming property from tax sale, clearing title, and securing building loan.

These payments, as heretofore shown, were made after the loan of $12,500 was made upon the property of the appellees. Record page 286, and Campbell had gotten an order signed by Daniel and Redman that the money should be paid to him, and had also gotten Daniel to endorse his note September 22, 1902, for $2,000 for which he got the money and the note was not taken up until December 21, 1903. See record page 181.

Answering statements on page 18, that he superintended the construction of the houses. See extracts from testimony before the auditor. See appendix. On January 19, 1903, the record shows Campbell had really done little on the construction of the houses. The deed to the first five lots was not recorded until December 6, 1902, and the first building loan made December 4, 1902. Refer to record page 23—Daniel—lower half of page.

Daniel's and Redman's Bad Faith.

Pages 18 and 19.

Answering first paragraph, page 18:

At this time, in the summer of 1902, Campbell was under contract to take care of the property, record, pages 270-1. We'll refer to record page 208:

"Q. Now (Mr. Hoover), in the light of Mr. Howard's testimony, I will ask you if there was any installment of interest due on what has been called the Franz trust or indebtedness between June 16, 1902, and December 16, 1902? A. No."

As Daniel and Redman had no financial connections with promoting the Sanitary Dwellings Company enterprise—or monied transactions with him during this time,

the statement is untrue. As to the imaginary letter alleged to have been written to Daniel at New London—by referring to record page 85, it will be seen that 2 years and 4 months after this letter is alleged to have been written and Daniel could not find it, Campbell makes this self-serving declaration on the record. The whole record shows these statements to be untrue.

Redman's Admissions.

Page 20.

Record page 57. Shows that Ridout stopped Redman in his testimony on this note.

It simply shows that the bank did not want to discount Campbell's note even with Redman's endorsement.

Daniel's Amazing Record.

Pages 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 of Brief for Appellant.

Answering 1st paragraph, page 20:

In the letter referred to, record, page 171, Campbell makes the suggestion of borrowing $5,000.00.

At this time, August, 1902, Campbell was still working on his Sanitary Dwellings enterprise, and was throwing out other suggestions of raising money.

Record page 120, 3d paragraph:

"Q. Mr. Campbell when was the idea of organizing the Sanitary Dwellings Company abandoned?

"A. Late in the summer of 1902."

Answering 2d paragraph, page 21, as to getting rid of Redman:

Refer to record page 237, at bottom over to page 238.

As to date of railroad improvements, refer to record page 119.

Campbell, statements in his prospectus, printed May, 1902, etc.

Answering 2d paragraph, page 21:

Absolutely untrue. No option was ever obtained even on Redman's interest in the railroad frontage, same being a very small portion of the whole property, record page 238.

Answering page 23:

Refer to record page 312. Answering eleventh question Mr. Campbell says: "I never had any intimation of any trouble until after the Malnati sale, which was in December, 1903.

"Q. How long after the Malnati sale?

"A. Well, when the dispute arose. It became acute after the dispute arose, about the $4,000 settlement. At this time he was demanding payment of $7,233.94.

Answering paragraph at top of page 24:

Auditor Payne's statement of the account was rejected by the court and a correct one requested.

Answering last paragraph page 31:

Refer to record page 270 as to this $500. Bottom of page 270 over to page 271.

Answering bottom of page 32:

Record page 91. Mr. Hoover credits $500 to Daniel June 16, 1902. Record page 186. Campbell credits himself on his own statement June 17, 1902, with $500.

Judge Wright ordered the account to be correctly stated by the auditor, viz., charging Campbell with all money received, and crediting him with all money paid out. The result is that shown in our final statement taken from the auditor's figures and printed herein, and proves that the balances shown on the auditor's first account were altogether erroneous and not in acordance with the directions given by the Court of Appeals for his guidance.

And based upon them is correctly stated thus:

Campbell received from various sources, as per Schedule A, Auditor's Second Report.....		$26,271.01
He also received from the proceeds of the first Malnati sale, as per said Schedule.....		1,686.54
He expended on account of the construction of the ten houses according to Schedule B of the Auditor's Report	$23,089.80	
He also expended in addition, according to Schedule A of the Auditor's Second Report.....	7,909.04	
	$30,998.84	$27,957.55

An excess of expenditures over receipts of $3,041.29

Cost of constructing the ten houses, Schedule E, Auditor's Report, was.....	$34,544.51
The cost of releasing the lots upon which the ten houses were built from the Franz trust, taxes and the cost of the two building loans, according to Schedule A of the Auditor's Second Report, was	5,369.99
Other items of expense, as per Schedule C of Auditor's First Report	1,564.05
Making a grand total of	$41,478.55

Of this amount all but *$3,041.29* was contributed *by the plaintiffs,* either by mortgaging the property of the plaintiff company (the two building loans), selling a portion of it (two sales to Malnati), and by cash advances. In other words, the plaintiffs contributed of this total cost $38,437.26, and the defendant $3,041.29.

Statement.

Total cost of the ten houses and ground.....		$41,478.55
Less am't 1st trusts.....	$25,000.00	
Less am't 2nd trusts, to pay off Ward loan	1,800.00	
		26,800.00
		14,678.55
Campbell's share of this cost.....		$4,892.85

Amount paid by Campbell on same per Judge Barnard's decree....		$3,041.29	
Also amounts in Schedule C	$500.00		
Also amounts in Schedule C	122.91		
	$622.91		
Less am't error in addition, Schedule C	9.00		
		613.91	
			3,655.20
Am't due & payable to Daniel & Redman by Campbell per Judge Barnard's final decree..			$1,237.65

He had not done this much by December 31, 1903, for the court must bear in mind that for a long period subsequent to the date the parties were still paying bills for labor and materials contracted by the defendant, and by his attitude he drove the plaintiffs into an expensive and protracted litigation.

Has Campbell Performed His Undertaking?

1. As such financial agent he received every dollar of money raised by his employers for the erection of the houses and payment of liens upon the property.
2. As such financial agent it was his duty to keep an accurate statement of receipts and expenditures, to take and preserve the vouchers for such his expenditures.
3. To have such statement of account and such vouchers open for the inspection of his employers.
4. To act with fidelity, frankness, and honesty in all his dealings with his employers.

Has he done any one of these things?

1. He admits and it is proven that he at no time kept any statement of his account.
2. He has rendered accounts shown and admitted to be false, claiming thereunder a fictitious balance.

He has shown to have produced as a voucher of the expenditures of his employers' money vouchers for moneys expended by him on other houses built for himself (see

S. C. Cowell's testimony, record, pages 210 to 221, and before the auditor).

3. Though repeatedly called on by his employers he has refused to render any account of his expenditures. He has refused to produce and submit to the inspection of his employers the vouchers supporting such expenditures. He has refused to state to his employers, when called on to do so, what the cost of the building actually was (record, page 36).

4. He has sought, by threats of throwing the property in the hands of a receiver, to extort from his employers $7,233.94 in December, 1903, as a balance claimed to be due him. He renewed such threats unless his employers would pay over to him one full third of the proceeds of the sale to Malnati (record, pages 29, 52, and 53). Under such threats and the further threat of not uniting in the deed to Malnati, he extorted from them the conditions shown in the letter to Mr. Cull (record, page 8).

5. Having the sole power to make contracts for the building of these houses and having the exclusive knowledge of all such contracts and business connected with the buildings, it is now shown that in many instances, conspicuously as demonstrated in exhibits copied herein and "extracts from testimony before the auditor," without the knowledge or consent of his employers, subsituted in his own place and for skill, knowledge, and ability which he had contracted to bring to this enterprise, he employed the man Wallace, and it clearly appears that he has presented and received credit for $1,312.87 more than the contract called for on the *carpentering alone*. This fact as to one voucher is apparent; to what further extent other alleged vouchers for expenditures have been fabricated or padded is known only to Campbell himself. And these and such as these have contributed to make up, no doubt, the amount of over $3,000 which he claims to have contributed from his own means. See the testimony before the auditor.

Extracts from Testimony Before the Auditor.

Charles M. Campbell.

By Mr. RIDOUT (p. 22):

Q. What connection, if any, did Mr. Wallace have with the carpenter work on those houses?

A. He was *superintendent of construction.*

Q. Through whom were payments made on account of the carpenter work, whether by contract or days' work?

A. All payments were made through Mr. Wallace.

Q. What sum did you pay Mr. Wallace for expenditure by him on account of this carpenter work on these Eckington houses?

A. $2,752.87.

Stacy M. Wallace.

By Mr. RIDOUT (p. 26):

Q. Did Mr. Keys complete the carpenter work?

A. No.

Q. Who employed the carpenters to do the work; who selected them?

A. *After Keys left?*

Q. Yes.

A. I did.

Page 27:

Q. What did you do with the proceeds of these checks as to paying the workmen?

A. *I paid off the men, and if anything was left I kept it.*

The defendant in this case is employed as a *skilled builder in the erection of said houses, he to take charge of said work,* and to *pursue such work industriously* and *with all the ability and skill he can bring to the work.*

Charles M. Campbell.

By Mr. SIDDONS (p. 24):

Q. What were his—Mr. Wallace's—duties as concerning the construction?

A. He was in general charge of the work.

Q. What compensation did Mr. Wallace receive for that service as superintendent of construction?

A. $3.50 per day.

Stacy M. Wallace.

By Mr. RIDOUT:

Q. You say the money received by you for carpenter work was received by you in part from Keys and in part from Campbell?

A. Yes, both of them.

Q. You don't know how much that was?

A. No.

Q. How was it paid for, in what shape, cash or check?

A. All money got from Campbell was paid by check; all money paid by Keys was paid in cash.

John W. Keys.

By Mr. SIDDONS (p. 22):

Q. Did your men work on the *south row* of houses?

A. Yes.

Q. How long a period; can you tell?

A. Well, we commenced there some time in December, and it must have been April when *we finished that row;* we was over there backwards and forwards from day to day; I could not tell exactly what month.

Q. You just changed about from one row to the other; your men did the carpenter work on both rows of houses?

A. Yes.

The defendant is employed as a skilled builder to take charge of the work, yet he engages a substitute or superintendent, who is then re-employed in the same capacity by a subcontractor on the job, whose bid had been accepted, to do this carpenter work for $720 (p. 29) on each row, or a total of $1,440. Yet these three superintendents got together, and they superintended so well that they make this carpenter work cost $2,752.87.

Thos. Cushing Daniel.

By Mr. SIDDONS (p. 147):

Q. Did either you or the Northwest Eckington Improvement Co. ever authorize the employment of Mr. Wallace as superintendent of the construction of these houses?

A. No, sir; we never did.

CAMPBELL v. NORTHWEST ECKINGTON IMPROVEMENT COMPANY.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 251. Argued April 23, 24, 1913.—Decided June 9, 1913.

A deed for an undivided interest in unimproved real estate heavily encumbered given to a third party in pursuance of prior agreements to undertake to aid in the financial and practical development of the property *held* to have been given for the undertaking and not for the performance and to have presently vested the grantee with the interest conveyed absolutely as stated on its face and not by way of security only.

The burden is on the complainant seeking to give a different effect to a deed than that of its face and where the bill does not waive an answer under oath, and defendant does answer under oath, weight must be given to the answer. *Vigil* v. *Hopp*, 104 U. S. 441.

To justify the setting aside of a solemn instrument of conveyance deliberately made by parties *sui juris* and giving it an effect different from its plain purport, the evidence should be clear, unequivocal and convincing. *Maxwell Land Grant Case*, 121 U. S. 325, 381.

An agreement to give skill and experience as a builder and contractor does not necessarily imply that he is to personally act as superintendent of construction; nor, under the circumstances of this case, should his accounts be surcharged with the amounts paid for wages to a superintendent employed by him.

One, who under an agreement is to be reimbursed for his outlay, should keep proper account of his receipts and disbursements and preserve the vouchers therefor.

36 App. D. C. 149, reversed.

THE facts, which involve the construction of contracts relating to, and rights of co-adventurers in, a real estate enterprise in the District of Columbia, are stated in the opinion.

Mr. John Ridout for appellant.

Mr. Holmes Conrad, for appellees, submitted.

MR. JUSTICE PITNEY delivered the opinion of the court.

This appeal brings under review a decree of the Court of Appeals affirming a decree of the Supreme Court of the District of Columbia that declared a deed of conveyance, absolute on its face, made by the Northwest Eckington Improvement Company to Charles M. Campbell, to have been intended only to secure to Campbell his share of the profits of an enterprise previously undertaken by the parties to the action for the development of the lands described in the deed. The decree also canceled the contracts between the parties respecting the enterprise, settled an account between them, decreed that Campbell should pay a certain sum found due from him on balance, required him to reconvey the land, and granted incidental relief. The decree thus affirmed was rendered pursuant to the mandate of the Court of Appeals upon the reversal of a former decree which was in Campbell's favor. The successive decisions, so far as reported, are to be found in 28 App. D. C. 483 (35 Wash. Law. Rep. 62); 38 Wash. Law Rep. 79; 36 App. D. C. 149 (39 Wash. Law Rep. 69).

The present appellant assails the decree in respect of its main features, and also in respect of the principle adopted in the accounting. A somewhat particular recital of the facts in evidence, with the grounds of decision in the courts below, seems to be called for.

In the year 1902, The Eckington Company held the legal title to a tract of land lying in a suburb of Washington, containing about ten and a half acres. The appellees, Daniel and Redman, were the owners and holders of practically all the stock in the company, and had entire

charge of its affairs. Redman was President, and Daniel, Secretary; Daniel, with Redman's assent, represented the latter, and also the company, in the various transactions out of which the controversy arises. The property was unimproved and unproductive, and its value problematical. It was encumbered with a deed of trust, held by a Mrs. Franz, given to secure promissory notes of Daniel, upon which approximately $32,000 were due. Interest and taxes were in arrears. In the early part of the year negotiations took place between Daniel and Redman, on the one hand, and Campbell, the appellant, on the other, with the object of interesting Campbell, who was a builder and a manager of real estate developments, and as a result a written agreement was made between them, of which the following is a copy:

WASHINGTON, D. C. *March 13, 1902.*

Whereas T. C. Daniel and S. C. Redman, of Washington, D. C., acting for themselves and the Northwest Eckington Improvement Co., of the District of Columbia, a corporation incorporated under the laws of the State of Virginia, are owners of a certain tract of land in northwest Eckington subject to trust interest and taxes fully described by the plats and printed matter of the above Company, consisting of ten and a half acres more or less, desire to dispose of the same, they hereby agree with C. M. Campbell, of Washington, D. C., in consideration of one dollar in hand paid by him, and other valuable consideration, that if he will organize or be instrumental in organizing a company, even with the assistance of T. C. Daniel or others, for the purchase of said ground, and give the necessary time and attention to that end, they agree, in case his plans work out so that they accept the consideration said Company offers for said ground, to give him a third of the amount they receive, whether of money, stock or property, and that in the event of such sale or disposition of said property he is to become

possessed of an undivided one-third interest in the property. In case less than the whole tract is sold then said Campbell is to become possessed of an undivided one-third interest in the amount sold.

Northwest Eckington Improvement Co. [Seal.]
T. Cushing Daniel. [seal.]
Samuel C. Redman. [seal.]
C. M. Campbell. [seal.]

Approved and accepted.

Northwest Eckington Improvement Co.
S. C. Redman, *Prest.* T. C. Daniel, *Sec.*"

Pursuant to this agreement, Campbell caused a corporation to be formed, with the title of "Washington Sanitary Dwellings Company," and endeavored to sell enough of its stock to provide for taking over the property and constructing sanitary dwellings thereon for workingmen and their families.

Mrs. Franz was pressing for money, and, in order to satisfy her, Campbell agreed to pay her, and did pay her, $500 on account of the amount due upon the deed of trust, and at the same time a memorandum was signed, of which the following is a copy:

Washington, D. C., *June 19th, 1902.*

Whereas a certain agreement was entered into March 13, 1902, between T. Cushing Daniel, S. C. Redman and C. M. Campbell, which agreement was accepted by the Northwest Eckington Improvement Co., now this further memorandum witnesseth: That the Company which said Campbell agreed to organize, as stipulated in said agreement, has been organized to our satisfaction; that the deed conveying said property to said Company has been prepared and properly executed and that the five hundred dollars which said Campbell this day advances to meet the requirements of the holder of the deed of trust on said property, is done upon acceptance of the above facts. Said transfer will be made upon the terms of acceptance noted

in the minutes of the Sanitary Dwellings Co., which are accepted. *Any monies advanced by said Campbell in handling the property in question shall be returned* returned *to him out of first sales.*

And all rights of said Campbell under said agreement of March 13, 1902, shall remain unimpaired.

[SEAL.] T. C. DANIEL,
[SEAL.] C. M. CAMPBELL.
NORTHWEST ECKINGTON IMPROVEMENT COMPANY,
—— ——, *President.* T. C. DANIEL, *Sec'r.*"

According to Campbell's testimony—undisputed so far as we have observed—the clause italicized was inserted by Daniel in his own handwriting in order to emphasize the assurance that Campbell was to have rights prior to the others to the extent of reimbursement of his advances. The paper was not signed by Redman, nor formally by the company—a matter that is of no present consequence in view of its subsequent recognition.

Besides the $500 paid to Mrs. Franz, Campbell paid out in June $122.91 for taxes upon the property, and during the spring and summer incurred expenses aggregating $481.81 in organizing and promoting the Washington Sanitary Dwellings Company. Daniel himself, called as a witness for the complainants, testified upon the subject as follows: "Mr. Campbell worked on the sale of stock in the company; employed others to assist him in placing the stock, but after finding that he could not make it a success he admitted the same to me and asked whether something could not be done to save the $1,000 that he had spent in that effort; we then agreed to abandon the Sanitary Dwellings enterprise." After some discussion the parties, under date of October 23, 1902, entered into a further agreement in writing of which the following is a copy:

"Whereas a contract was entered into March 13, 1902,

between T. C. Daniel and S. C. Redman and the Northwest Eckington Improvement Co., a corporation, and C. M. Campbell, stipulating for the services of said Campbell, it is further agreed, while preserving to said Campbell any rights he may have under said contract, as follows:

"1. In consideration of the services *of* said Campbell has already performed and for the purpose of securing his further services and co-operation in the handling and improvement of said property, it is agreed to make certain extension of the provisions of said contract.

"2. It is now decided to release the Sanitary Dwellings Company, if necessary, from any obligations, it may have assumed in regard to any agreement to purchase said property.

"3. The said Daniel, Redman and the Northwest Eckington Improvement Company have decided to improve and market said property, as fast as may be possible, by building houses thereon.

"4. To this end they desire to utilize the skill of said Campbell as a builder and his assistance financially.

"5. It is agreed by said Daniel, Redman and the Northwest Eckington Improvement Company to employ said Campbell as a skilful builder in the erection of said houses, he to take charge of said work, with such assistance as the other parties to this contract may be able to furnish, and pursue such work industriously and with all the ability and skill he can bring to the work.

"6. In the borrowing of the money that may be needed in developing said enterprise he is to use his credit by joining the other parties to this contract in the making or endorsing of any notes that may be required in negotiating the necessary loans for the making of said improvements and in paying off the loan of $32,000 now due on said property. In doing this account is to be taken of all moneys and interest he has already advanced under contracts in

relation to said property already entered into between the parties hereto. And any sums advanced or to be advanced by any of said parties for the same purpose under said agreements is likewise to be accounted for.

"7. It is proposed to erect at once five houses on said property and follow them with others as soon as such a course is warranted by the results and approved by the judgment of the parties to this agreement, said Campbell to industriously push said improvements with his best skill and ability, as provided in paragraph 5 herein, without any further compensation for his services than are provided for herein.

"8. In return for said undertaking on said Campbell's part he is to become possessed of an undivided one-third interest in said property.

Witness our hands and seals this 23rd day of October, 1902.

NORTHWEST ECKINGTON IMPROVEMENT CO.,
By SAMUEL C. REDMAN, *Pres.*
THOS. C. DANIEL, *Sec'y.*
SAMUEL C. REDMAN.
T. C. DANIEL.
C. M. CAMPBELL."

The execution of this instrument, at least by the Eckington Company, appears to have been deferred until the latter part of the month of November, awaiting its approval by a stockholders' meeting. Shortly afterwards, and in order to carry out the provisions of the seventh paragraph, an agreement in writing was made under date December 2d between the individuals Daniel, Redman, and Campbell, of the one part, and Mrs. Franz, of the other, whereby the amount due upon the promissory notes of Daniel secured by her deed of trust was ascertained at $32,938.66; she agreed to release a plot sufficient for five houses on payment of a specified consideration, to be credited as part payment upon the notes; they agreed to

erect five substantial brick dwellings, to cost not less than $3,000 each, and pay off the taxes on the entire property; and they (including Campbell, who was not until then personally responsible to Mrs. Franz), guaranteed the payment of the balance remaining due upon the promissory notes, when and as they should respectively become due; but it was agreed that upon the making of the part payment provided for, the time for payment of the balance was to be extended for two years.

Pursuant to this, the plot upon which the five houses were to be built was released by Mrs. Franz from the deed of trust, and conveyed by the Eckington Company to Daniel, Redman and Campbell as individuals, and they placed upon it a new mortgage for the amount of $12,500, paying a part of this money to Mrs. Franz as consideration for her release, and placing the residue of the loan at the disposal of Campbell, to be used in the construction of the houses.

Under the agreement with Mrs. Franz, Campbell found it necessary to pay $957.55 for the taxes upon the entire property, and this he paid from his own funds on December 8. This, with some small items that need not be specified, added to his expenditures prior to October 23, already mentioned ($500 to Mrs. Franz, $122.91 for taxes, and $481.81 advanced on behalf of the Sanitary Dwellings Company enterprise), made an aggregate of $2,094.62. Campbell became uneasy respecting his position in the matter, and an agreement was drawn up by his counsel, bearing date December 10, 1902, for execution by the Eckington Company, and by Daniel, Redman, and Campbell as individuals, and was tendered by Campbell to Daniel for the purpose; which paper, after a preamble that recited the agreement of October 23d, contained a repetition of the provisions of that agreement, with the addition of several clauses, by one of which "The Eckington Company agrees to execute at once a conveyance of said un-

divided one-third interest to said Charles M. Campbell in fee simple."

This instrument was never executed, and, after some further discussion, the deed in question was prepared and presented by Campbell to Daniel. The latter testified: "He [Campbell] said that Mr. Ridout had drawn that contract up for him, and he did not see any reason why we should not sign. I read it over pretty carefully, and when I saw that it was a deed for a one-third undivided interest, I knew or thought that it tied Mr. Campbell to the proposition so that he could not get any way of deeding that third interest away until he had earned it by the carrying out of his contract, and, thinking it over, it seemed to me that it would be a rather reasonable request, if he was going to put in a great deal of money to build up that entire property, and I thought he should have insisted upon some security on the record; I think I would have insisted upon something like that myself, and it was a business proposition, and I submitted it to Mr. Redman and told him I did not think there was anything wrong about it—(interrupted)—I told Mr. Campbell after thinking it over, I would be perfectly willing to execute that as security to him, to protect him. . . . At that time I believed that he was going to carry out the contract, and it would be all satisfactory."

The deed was actually executed and delivered on January 16, 1903, and thereby the Northwest Eckington Improvement Company, for "divers valuable considerations, and the sum of ten dollars," conveyed to Campbell, his heirs and assigns, an undivided one-third interest in the property in question, excepting the portions theretofore conveyed. It contained a special warranty excepting recorded encumbrances.

Before the first five houses were completed, and in the spring of 1903, the parties proceeded with the construction of another row of five houses under an arrangement similar

to the former one, including a building loan to pay the cost of construction, the proceeds (over and above the amount necessary to procure the release from the deed of trust) being placed in Campbell's hands. While matters were thus progressing, and when the first five houses were nearly or quite completed, the opportunity was offered to dispose of a considerable plot of the unimproved land to one Malnati, and the sale was made in November, 1903, and consummated during the following month, at the price of $15,200; a price evidently deemed highly favorable by the owners. Of the proceeds, $6,000 were paid on the Franz mortgage and the taxes. Before the sale was consummated Campbell demanded that out of the balance he should be paid a sum approximating $4,000 for what was due to him for advances on the joint account, including the $2,094.62 that he had expended prior to the making of the deed and the excess cost of the ten houses to date, over and above the proceeds of the building loans. Campbell's position seems to have been that the agreement expressed in the memorandum of June 19, 1902, to the effect that all moneys advanced by him in handling the property should be returned to him out of the first sales, was still in force; and that as the sale to Malnati was the first sale, he was entitled to be reimbursed out of the proceeds in order to put him upon an equality with the others, who had advanced nothing or practically nothing. Daniel resisted Campbell's demand, his view being that the June memorandum was superseded in this respect by the sixth clause of the October agreement, and that while "account was to be taken" of Campbell's advances, they were not to be returned to him out of the first sales. Daniel asked Campbell for an accounting and an informal account was rendered, to which Daniel made objections on the ground that it was unaccompanied with vouchers; and an arrangement was made whereby $4,000 of the proceeds of the sale to Malnati were left in the hands of

a third party to await the settlement of the controversy, and the balance was divided, one-third to Campbell and the remainder to the Eckington Company.

The controversy continued, however, with increasing acrimony until February 8, 1904, when the appellees filed in the Supreme Court of the District their present bill in equity against Campbell, setting up the history of the above transactions from their standpoint, and asserting that the deed of January 16, 1903, was given not as an absolute conveyance, but by way of security. The bill further alleged that he had failed to perform his obligations under the contract of October 23, 1902, had involved the complainants in debt, refused to inform them as to the cost of buildings, or in any satisfactory manner to account for the large sums of money placed at his disposal for the building operations, and threatened to embarrass complainants in making any disposition whatever of the property, etc. The prayer was that Campbell be required to account; that all contracts between the parties be canceled; and that he be required to reconvey to the Improvement Company the undivided third interest conveyed to him by that company.

Campbell answered under oath, denying that the conveyance was intended as security, and averring that the complainants had recognized his right to such a conveyance, and that it was made to convey absolute title to him in consideration of his undertakings, set out in the agreement of October 23, 1902, and the other agreements between the parties.

Voluminous testimony was taken on both sides, the essence of which we have endeavored to state, and the cause was brought on to a hearing before the Supreme Court. That court, by Mr. Justice Anderson, delivered an opinion reviewing the history of the transactions, the successive written agreements between the parties, and the evidence respecting various items of disbursement claimed to have

been made by Campbell, and claimed by the complainants not to have been satisfactorily accounted for by him. Upon the principal issue the view of the court was expressed as follows:

"Coming now to the specific question whether the deed to Campbell was intended to be absolute or merely as security, there are but two witnesses testifying about it. One is Daniel, who says that it was understood to be only as security, and that thereafter in July 1903 Campbell for the second time presented the proposed contract of Dec. 10, 1902, providing for a conveyance to him of an undivided third interest in fee simple, and said that his attorney advised that it be executed. The other is Campbell, who says that the deed was intended to be absolute, and that the proposed agreement of Dec. 10, 1902, was never presented to Daniel after the execution of the deed. In this state of the case, it may be inquired what light the circumstances of the case throw upon this question; but such inquiry would seem rather to bear out, if anything, the position of Campbell than that of Daniel. Campbell and the other parties went into the joint enterprise to endeavor by their conjoint efforts to make something out of a piece of property which was heavily encumbered and becoming more and more encumbered every day, because it could not take care of the fixed charges upon it continually arising. They all recognized that something might be made out of the property, if diligent effort was made to develop it, but the hope of making anything out of it seemed to reside more in diligent efforts to be made than in the property itself. Accordingly, the joint enterprise was undertaken. They all joined together, Campbell being joined because of his skill as a builder in addition to his general business ability and the assistance which he might give, together with the others, in the way of making and endorsing notes; and the other parties being joined to contribute to the enterprise the property which

it was sought to so develop as to make it a success, instead of the failure which it had theretofore been, as also to contribute their general business ability. In such an arrangement it certainly was not unreasonable to give Campbell a status as the owner of an undivided interest in the enterprise. On the contrary, it would have been rather unusual and unreasonable to treat him in any other manner, because he was, by virtue of the contract, made a sharer in the failure as well as in the success of the enterprise. He stood to lose as well as to gain, and in the event of loss, nothing whatever could be reaped by him for his contribution of skill and money.

"But even if the circumstances in the case could be construed as in some manner tending to support the position of the complainants, certainly it could not be said that they are of a strength equal to the testimony of a witness, which would be required in order to establish the complainants' position, they not having waived by their bill answer under oath, and the defendant having answered under oath. *Vigel* v. *Hopp*, 104 U. S. 441."

The court therefore held that the prayers of the bill asking that the deed to Campbell be declared to be a security merely, and that the contracts be canceled, should be denied; and that the cause should be referred to the Auditor for a full accounting respecting the affairs of the joint enterprise, including that portion relating to the Sanitary Dwellings Company. A decree was entered accordingly, bearing date January 4, 1906.

The complainants appealed, and the Court of Appeals (28 App. D. C. 483) held that the deed of January 16, 1903, was not absolute, but intended merely as security for Campbell in the event of his performance of the agreement of October 23, 1902. The decree of the Supreme Court, so far as it denied the prayers for a cancellation of the agreements and a reconveyance from the defendant, was reversed, and the cause remanded with direction to

enter a decree declaring the true intent and purpose of the deed of January 16, 1903, to be as indicated in the opinion of the Court of Appeals.

That court, while conceding the evidential weight of Campbell's sworn answer, under the rule laid down in *Vigel* v. *Hopp*, 104 U. S. 441, differed from Mr. Justice Anderson in his view of the circumstances surrounding the transaction under inquiry. The liberal terms conceded to Campbell in the agreement of March 13, 1902, were attributed to the fact that the complainants were then apprehensive of the foreclosure of the mortgage upon the land. The view was expressed that the condition of the property had greatly improved during the succeeding months, on account of certain railroad developments; that the parties were agreed as to the reasonable prospect of building houses thereon and securing income therefrom; that it was apparent the cash value of the land had advanced considerably beyond the amount of the Franz mortgage, and apprehension of its loss by foreclosure was greatly if not entirely relieved; that Campbell submitted estimates for the erection of as many as forty houses, and the probable income therefrom, as indicating successful development in that way; and the parties then entered into the contract of October 23, 1902. The opinion proceeds (28 App. D. C. 494):

"The legal effect of this contract was to make the complainants partners with Campbell in the development of the land by building houses; they furnishing the land and Campbell undertaking the erection of the houses. All were to join in using their credit in obtaining money to erect houses, and pay off the $32,000 encumbrance; and the sums advanced by the respective parties were to be accounted for. Five houses were to be erected at once, to be followed by others if results were approved. The last paragraph of the agreement was that 'in return for said undertaking on said Campbell's part he is to become

possessed of an undivided one-third interest in said property.' Clearly this did not contemplate that Campbell should at once become the absolute owner of this one-third of the land. It was necessarily conditioned upon the terms of his undertaking, before recited in the contract. He had no immediate right to demand a conveyance thereunder, and none when the deed was actually executed and delivered to him on January 16, 1903. Complainants contended that this deed was made, at Campbell's request, to secure him in his rights under the contract."

And again (p. 496):

"When the deed was executed, on January 16, 1903, it is not pretended that there was any new consideration for its execution. It was founded wholly upon the provisions of the contract of October 23, 1902, no matter what may have been the private opinion of the respective parties as to Campbell's rights thereunder; and its meaning, purpose, and effect are determined thereby.

"The difficulty attending the correction of a deed or instrument carrying into effect a previous parol agreement is obviated when it appears to have been prepared and executed in pursuance of a written agreement. When it appears that the instrument intended to give effect to a written agreement is inconsistent with its terms there is a manifest equity to correct the error. Adams, Eq. 169; *Elliot* v. *Sackett*, 108 U. S. 132, 141.

"As before stated, there is nothing which tends to show that Campbell was to become the absolute owner of one-third of the complainants' land without regard to the performance of the joint undertaking contemplated in the contract of October 23, 1902. It is true that contract is inartificial and somewhat vague, but no such meaning can be imputed to it.

"In the light of the circumstances pointed out, we can come to no other conclusion than that complainants' statement of the purposes of this deed is the correct one.

They represent it as given to secure Campbell in their performance of the contract. It was not a security, or an additional security, in the ordinary sense, but it did make Campbell secure, in the case of his endeavor to carry out that contract, by giving him at once the conveyance that he might thereafter become entitled to, and enabling him, by its registration, to give notice of his rights under the contract, to all persons who might thereafter acquire any interest from the complainants.

"The decree, in so far as this conveyance is concerned, is interlocutory in its nature, and for the guidance of the auditor in stating the account between the parties, and, instead of virtually establishing it as an absolute deed, should have declared it to be merely a conditional one dependent upon the performance of the agreement in accordance with which it was made. The question whether it shall be canceled is a final one that can only be properly determined upon the coming in of the auditor's report with the account that has been ordered to be taken by him."

Upon the going down of the mandate, the Supreme Court entered an interlocutory decree in accordance with it, and thereafter the hearing before the Auditor proceeded; but the accounting was made, or at least attempted to be made, not upon the original theory of a joint ownership in the property, but upon a theory of the rights of the parties under the agreement of October 23, 1902, that resulted from the decision of the Court of Appeals.

The Auditor stated an account charging the defendant with his actual receipts from the proceeds of the building loans, and from other sources connected with the enterprise, and giving him credit for his expenditures for construction and payments made to the complainants. An elaborate report was made, to which exceptions were filed by the complainants, and these the Supreme Court sustained in part and overruled in part, reserving certain of

the questions for disposition on the final hearing, and meanwhile ordering the Auditor to restate the account, which was done, and to this second report both parties took exceptions.

The case then came on for final hearing before the Supreme Court upon the whole record, including the pleadings, the evidence, and the exceptions. Respecting the disputed matters in the accounting, we need say no more than that the court sustained Campbell's right to credit for the $500 paid by him to Mrs. Franz in June, 1902, and $122.91 paid about the same time for taxes, but overruled his claim for an allowance of the $481.81 paid on account of the Sanitary Dwellings Company, upon the ground that this expenditure was made for his own account and at his own risk, and had not benefited the common enterprise.

Upon the main questions the court (38 Wash. Law Rep. 79), following the lines laid down in the opinion of the Court of Appeals, held as follows:

(1) That the deed of January 16, 1903, was not intended to convey a present absolute title, but was only to secure the defendant his share of the profits of the enterprise when he should perform his share of the work of building houses and making sales; and that to the extent that he had performed his contract obligations, the security should be kept intact;

(2) That as to the ten houses and the land on which they stood, the defendant had an undivided one-third interest under the two deeds executed to him and to the complainants Daniel and Redman, that title being absolute, subject to encumbrances;

(3) That the contracts which were executed between the parties plaintiff and defendant ought to be canceled, because there was no prospect of any amicable continuation of operations under them, even if there were any desire by either party to continue;

(4) That the defendant should reconvey to the Eckington Company the title received from it by the deed of January 16, 1903, on being paid or satisfactorily secured what, if anything, remained due to him on settlement of accounts on the lines previously indicated;

(5) That if the defendant had become bound to pay any portion of the encumbrance on the unimproved land held by Mrs. Franz, the complainants should either obtain his release therefrom or indemnify him against the same.

This result was carried into the final decree, with a variance that is unexplained by anything in the opinions, or elsewhere in the record, so far as we have observed, viz., the decree subjects Campbell's interest in the ten houses to a charge in favor of Daniel and Redman of $1,237.65, "being the balance due by him on his one-third of the excess cost of building said houses and obtaining a release of the said ten lots from a mortgage or deed of trust thereon known as the Franz mortgage or deed of trust, over and above the money obtained for this purpose by loans secured by Daniel, Redman and Campbell." Perhaps it was intended to charge Campbell's interest in the ten houses, in favor of his co-tenants, with a sum found to be due upon the theory of accounting that resulted from the decision of the Court of Appeals.

The defendant Campbell appealed to the Court of Appeals, where the decree was affirmed, the court adhering (36 App. D. C. 149) to its former view. As to the item of $481.81, the court expressed concurrence with the view of the Supreme Court, saying: "This item benefited the complainants in no way, and we do not think its repayment was contemplated by the October contract."

Upon the main question, the court treating the deed of January 16, 1903, as given only to secure Campbell for his share of the profits when he should perform his part of the agreement, proceeded to consider the question of his conduct after the making of the deed. The court found him

at fault, because he stopped when ten houses were constructed, although the income upon them was not sufficient to liquidate the fixed charges upon the balance of the property. It was in effect held that he was at fault in employing a superintendent of construction, and in failing to keep careful accounts of receipts and expenditures, and preserve all vouchers. His conduct in demanding reimbursement of the moneys he had advanced, and a third of the net proceeds, upon the sale to Malnati, "although under his contract he was fully protected," was characterized as arbitrary, as was his receipt of one-third of the balance, "when that sum, as he was informed and had every reason to know, was needed to develop the remaining land." His conduct after the Malnati sale was likewise criticised, and the opinion concludes (36 App. D. C. 158):

"From a careful examination of the entire record, we are forced to the conclusion that the decree was right. It is difficult to perceive wherein the defendant has been injured. He was to receive a one-third interest in certain property upon the theory of services performed in the improvement and sale of that property. To the extent that he has performed the obligation imposed upon him by the contract, his interests have been fully protected by the decree: more he has no right to expect, and more a court of equity certainly ought not to award him."

From our examination of the record, we are constrained to the view that the Court of Appeals erred in adjudging that the deed in question was given as security merely, and not as an absolute conveyance. The court conceded that the burden was upon the complainants to prove that this instrument did not express the intention of the parties at the time, and that if the general rule laid down by this court in *Vigel* v. *Hopp*, 104 U. S. 441, were applicable, the bill must in that respect be dismissed. The opposite conclusion was reached in view of the circumstances

surrounding the transaction, and because of the construction that the learned court placed upon the contract of October 23, 1902.

We place a different construction upon that contract, and also take a different view of the circumstances under which it was made. Avoiding repetition so far as possible, our view may be expressed as follows:

We agree that the legal effect of this contract was to make the complainants in effect partners with Campbell in the development of the land by building houses, they furnishing the land and he undertaking the erection of the houses. But it seems to us that the agreement recognized that the joint enterprise had commenced in March and had continued ever since; and that Campbell was not only entitled to consideration for the services he had "already performed"—that is, for what he had done under the March agreement—but was entitled to reimbursement for whatever money he had advanced, with interest on those moneys.

The March agreement shows upon its face (and all the circumstances corroborate this) that the prime object of the parties was to dispose of the property, and that the particular method of disposing of it was not of the essence of the matter. This is plain from the language—"That if he [Campbell] will organize or be instrumental in organizing a company, even with the assistance of T. C. Daniel or others, for the purchase of said ground, and give the necessary time and attention to that end, they agree, in case his plans work out so that they accept the consideration said company offers for said ground, to give him a third of the amount they receive, whether of money, stock, or property, and that in the event of such sale or disposition of said property he is to become possessed of an undivided one-third interest in the property. In case less than the whole tract is sold then said Campbell is to become possessed of an undivided one-third interest

in the amount sold." This agreement is inartificially expressed, and requires construction. It was hardly intended that Campbell should have one-third of the consideration received by the vendors, and also an undivided one-third interest in the property. Neither did it mean that in case less than the whole tract should be sold he was to become possessed of an undivided one-third interest in the land sold. What it meant was, that he should have, directly or indirectly, one-third interest in the proceeds of the property. In short, he was to be a "partner" in the enterprise.

The court seems to have considered that this agreement virtually expired with the failure of the scheme for financing the Sanitary Dwelling Company. We do not so regard it. The conduct of the parties from March until October, the wording of the memorandum of June 19th, the negotiations leading up to the abandonment of the Sanitary Dwellings Company scheme, and the making of the October agreement instead—one of the inducements to which, according to complainants' uncontradicted evidence, was to enable Campbell to recoup the money he had expended on the Sanitary Dwellings Company—and finally the language of the October agreement, all go to show that the main purpose, and the association of the parties to accomplish it, were never abandoned.

We do not think this agreement can be properly considered as foreclosing all rights that Campbell had under previous agreements, saving as expressly reserved. By its terms, after reciting the contract of March 13, it declared: "It is further agreed, *while preserving to said Campbell any rights he may have under said contract*, as follows: 1. In consideration of the *services said Campbell has already performed*, and for the purpose of securing his further services and cooperation in the handling and improvement of said property it is agreed to make cer-

tain *extension of the provisions of said contract.*" Then follow the clause providing for a release of the Sanitary Dwellings Company; the recital of the purpose to improve and market the property as fast as possible by building houses upon it, the desire to utilize the skill of Campbell as a builder, and his assistance financially, the agreement that he is to "take charge of said work, with such assistance as the other parties may be able to furnish;" that in borrowing the money needed for developing the enterprise he is to use his credit by joining with the other parties in making notes, etc., for the necessary loans; and that "in doing this, *account is to be taken of all moneys and interest he has already advanced under contracts in relation to said property already entered into between the parties hereto.* And any sums advanced or to be advanced by any of said parties for the same purpose under said agreements is likewise to be accounted for." The seventh clause is: "It is proposed to erect at once five houses on said property and follow them with others as soon as such a course is warranted by the results and approved by the judgment of the parties to this agreement, said Campbell to industriously push said improvements, etc., without further compensation for his services than are provided for herein." And 8: "*In return for said undertaking on said Campbell's part he is to become possessed of an undivided one-third interest in said property.*"

The agreement reads plainly that Campbell was to have this interest in the property, not for performance, but for *his undertaking.* In short, as we think, he was to be presently vested with a one-third interest in the equity of the property, and to be thereby put upon an equal footing with Daniel and Redman, who through their stock interest in the Eckington Company would be entitled to a two-third's interest.

The view adopted by the court below would leave Campbell's position—he being the only one of the party

able and willing to advance cash for the development of the enterprise—altogether precarious. It was in contemplation that the expenditures made by him should be made for the common benefit, and that the property would be enhanced in value if the enterprise proved successful. And it seems most improbable that he should be willing to devote his time and experience, and also pledge his credit to the extent necessary to pay off the existing loan of $32,000, and whatever more was needed to put up the houses, and await a successful outcome before being assured of his reward.

Besides, the undertaking would not be fully completed *until the property had been marketed;* that is, had passed into the hands of third parties. How could he then "become possessed" of an undivided one-third interest in it?

It is not strange that Campbell very shortly found that his position was insecure without a deed that should vest in him the legal title to the undivided one-third. Shortly after the execution of the agreement of October 23d, he began to insist that his rights under it should be secured to him. The proposed agreement of December 10, 1902, was submitted and rejected. Afterwards, and in response to his insistent demands, the deed in question was made and delivered to him in January. For a sufficient consideration, it is not necessary to look beyond the situation evidenced by the agreement of October 23d; for it seems to us that the act of the parties in making the deed is clearly in accord with the view we take of that contract, and amounted to a practical interpretation of it; the purpose in making the deed being to simply put into legal form what equity would perhaps have required to be done for carrying that contract into effect.

If we need to look elsewhere for the intent of the parties, then in addition to the rule respecting the weight that shall be given to a sworn answer in Chancery, invoked

and relied upon in *Vigel* v. *Hopp*, 104 U. S. 441, and in numerous other cases—*Union R. R. Co.* v. *Dull*, 124 U. S. 173, 175; *Southern Development Co.* v. *Silva*, 125 U. S. 247, 249; *Beals* v. *Illinois &c. R. R. Co.*, 133 U. S. 290, 295; *Monroe Cattle Co.* v. *Becker*, 147 U. S. 47, 54—this case is a proper one for the application of the well-known principle that to justify the setting aside of a solemn instrument of conveyance, deliberately made by parties *sui juris*, and the giving to it of an effect different from its plain purport, the evidence should be clear, unequivocal, and convincing. *Maxwell Land-Grant Case*, 121 U. S. 325, 381. The evidence of the complainants does not, we think, measure up to the standard.

The result of these views is that the decree, in so far as it sets aside the deed of January 16, 1903, as being merely conditional and dependent upon performance by Campbell of the agreement of October 23, 1902, should be reversed, because the deed must be held to be, what it purports to be, an absolute conveyance.

For the same reasons the decree, so far as it cancels the contracts of March 13, 1902, and of October 23, 1902, should be reversed.

The original prayer of the complainants for an accounting should be sustained; but the accounting should be made upon the basis of the agreement; Campbell and the others being treated as *quasi*-partners respecting the improvement and marketing of the property in question from the making of the agreement of March 13, 1902. He should be charged with all moneys received by him as proceeds of loans or otherwise, and, on the other hand should be credited with whatever he has fairly and properly expended for the common enterprise, whether the particular expenditure can be shown to have ultimately profited the enterprise or not. This includes the $481.81 disbursed on account of the Sanitary Dwellings Company, and other expenditures made under the agreement of

March 13, 1902; his right thereto being preserved by the contract of October 23d, as moneys "advanced under contracts in relation to said property already entered into between the parties hereto;" and, under the same clause, he is entitled to interest upon his advances.

We need not pass upon other questions raised respecting the accounting, except to say that we of course do not agree with the view expressed by the Court of Appeals respecting the conduct of Campbell subsequent to the making of the deed. The court deemed that in employing a superintendent of construction he violated the letter or spirit of the contract of October 23d. That agreement contemplated that his skill as a builder, and his assistance generally, should be utilized, and he was to take charge of the work, with such assistance as the other parties might be able to furnish. It does not necessarily follow that he was personally to fill the place of superintendent of construction. It is of course true that Campbell ought to have kept a proper account of his receipts and disbursements, and so far as he failed to do this or to preserve proper vouchers, the matter may be dealt with on the accounting according to the usual principles.

The decree of the Court of Appeals reversed, with costs in this court and costs of both appeals in the Court of Appeals; and the cause remanded with directions to reinstate and affirm the decree of the Supreme Court of the District of Columbia bearing date January 4, 1906, and to reverse and set aside all subsequent decrees so far as inconsistent therewith, and remand the cause to said Supreme Court with directions to proceed to an accounting between the parties, or a revision of the accounting already had in that court, and further proceedings thereon as equity may require, and in accordance with the views above expressed.